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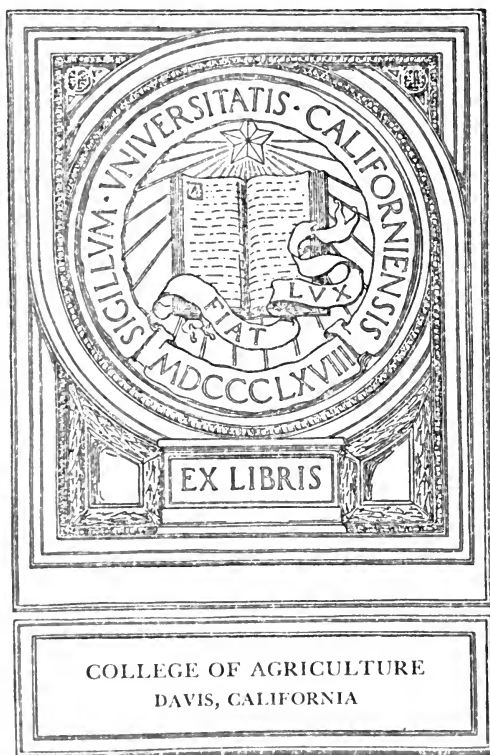
STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

AMERICAN MINING LAW

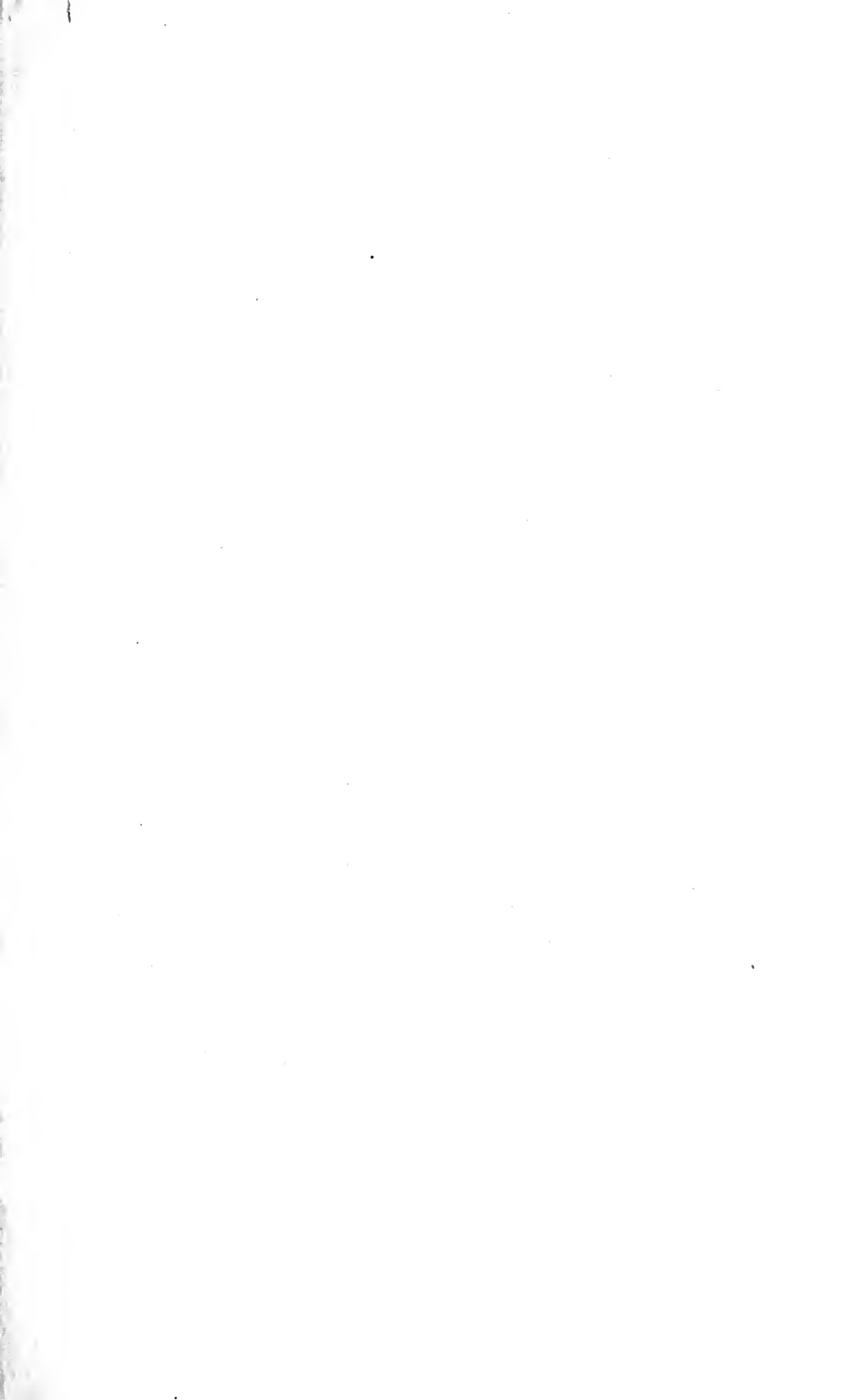
VOLUME II

BULLETIN 123

DIVISION OF MINES
FERRY BUILDING, SAN FRANCISCO



COLLEGE OF AGRICULTURE
DAVIS, CALIFORNIA



STATE OF CALIFORNIA
EARL WARREN, Governor
DEPARTMENT OF NATURAL RESOURCES
WARREN T. HANNUM, Director

DIVISION OF MINES
FERRY BUILDING, SAN FRANCISCO

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SAN FRANCISCO

BULLETIN 123

FEBRUARY, 1943

AMERICAN MINING LAW

WITH FORMS AND PRECEDENTS

By A. H. RICKETTS



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VOLUME II

(STATUTES, FORMS, PRECEDENTS, AND INDEX, PP. 619-1018)

APPENDIX A

FEDERAL STATUTES

Title XXXII, Chapter VI, Revised Statutes
(U. S. C. A., Title 30)

MINERAL LANDS AND MINING RESOURCES

SEC. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law. Mineral lands reserved

SEC. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States. Mineral lands open to purchase by citizens.

SEC. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other. Length of mining claims upon veins or lodes

SEC. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any state or territory thereof, by the filing of a certified copy of their charter or certificate of incorporation. Proof of citizenship

Locators'
rights of
possession
and enjoy-
ment

SEC. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with state, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations; and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Owners of
tunnels,
rights of

SEC. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owner of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

Regulations
made by
miners

SEC. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the state or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-

two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives,¹ have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section his interest in the claim shall become the property of his co-owners who have made the required expenditures.

SEC. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office,

Patents for
mineral
lands, how
obtained

¹ The term "legal representatives" is not necessarily restricted to the personal representatives of one deceased, but it is sufficiently broad to cover all persons who, with respect to his property, stand in his place, and represent his interests, whether transferred to them by his act, or by operation of law. *New York Mutual Life Ins. Co. v. Armstrong*, 117 U. S. 597; see also *Hogan v. Page*, 2 Wall. 605; *United Verde Co. (on petition)*, 54 L. D. 4.

upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

Adverse
claim, pro-
ceedings on

SEC. 2326.¹ Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the register of the land office, together with the certificate of the surveyor general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the

¹ See, also, act June 7, 1910 (36 Stats. 459), extending the time in which to file adverse claims and institute adverse suits with respect to mineral applications in Alaska.

judgment roll shall be certified by the register to the commissioner of the general land office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim with the proper fees, and file the certificate and description by the surveyor general, whereupon the register shall certify the proceedings and judgment roll to the commissioner of the general land office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever.

SEC. 2327. The description of vein or lode claims upon surveyed land shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the surveyors general, in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and surveyors general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto.

Description
of mining
vein or lode
claims

Amended
Apr. 28,
1904 (33
Stat., 545)

Patents to
conform to
official
monuments

Monuments
to govern
descriptions

SEC. 2328. Applications for patents for mining claims under former laws now pending may be prosecuted to a final decision in the general land office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

Pending ap-
plications;
existing
rights

SEC. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been

Conformity
of placer
claims to
surveys,
limit of

previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

Subdivisions
of ten-acre
tracts;
maximum
of placer
locations

SEC. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide preemption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

Conformity
of placer
claims to
surveys,
limitation
of claims

SEC. 2331. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or preemption purposes.

What evidence
of possession,
etc., to estab-
lish a
right to a
patent

SEC. 2332. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the state or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

Proceedings
for patent
for placer
claim, etc.

SEC. 2333. Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim and twenty-five feet of surface on each side thereof. The remainder of the placer claim or any placer claim not embracing any vein or lode claim shall be paid for at the rate of two dollars and

fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, in application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

SEC. 2334. The surveyor general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The commissioner of the general land office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land office, which statement shall be transmitted, with the other papers in the case, to the commissioner of the general land office.

Surveyor general to appoint surveyors of mining claims, etc.

SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office. In cases of contest as to the mineral or agricultural character of the land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party can not be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

Verification of affidavits, etc.

Where veins intersect, etc.

SEC. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Patents for nonmineral lands, etc.

SEC. 2337. Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made for such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

Mill sites

What conditions of sale may be made by local legislature

SEC. 2338. As a condition of sale, in the absence of necessary legislation by congress, the local legislature of any state or territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

Vested rights to use of water for mining, etc.; right of way for canals

SEC. 2339. Whenever by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injuries or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

Patents, preemptions and homesteads subject to vested and accrued water rights

SEC. 2340. All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

Mineral lands in which no valuable mines are discovered open to homesteads

SEC. 2341. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which

there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of preemption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this title, relating to "Homesteads."

SEC. 2342. Upon the survey of the lands described in the preceding section, the secretary of the interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to preemption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

Mineral lands, how set apart as agricultural lands

SEC. 2343. The president is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

Additional land districts and officers, power of the President to provide

SEC. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

Provisions of this chapter not to affect certain rights

SEC. 2345. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two. And any bona fide entries of such lands within the states named since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of preemption as other public lands.

Mineral lands in certain states excepted

SEC. 2346. No act passed at the first session of the Thirty-eighth Congress, granting lands to states or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

Grant of lands to states or corporations not to include mineral lands

ACTIONS FOR POSSESSION

No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for

damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States but such case shall be adjudged by the law of possession.

Revised Statutes § 910, 28 U. S. C. A. § 690. Construed in *Meydenbauer v. Stevens*, 78 Fed. 793; *Livermore v. Beal*, 18 Cal. A. (2d), 535, 64 Pac. (2d) 987; *South End Co. v. Tinney*, 22 Nev. 19, dissenting opinion p. 69; see also *Harris v. Kellogg*, 117 Cal. 499, 49 Pac. 708.

ACTS OF CONGRESS PASSED SUBSEQUENT TO THE REVISED STATUTES

AN ACT To amend section two thousand three hundred and twenty-four of the Revised Statutes, relating to the development of the mining resources of the United States.

Money
expended in
a tunnel
considered
as expended
on the lode

That section two thousand three hundred and twenty-four of the Revised Statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purpose of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act. (18 Stats. 315.)

AN ACT To exclude the States of Missouri and Kansas from the provisions of the act of Congress entitled "An act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two.

Missouri and
Kansas ex-
cluded from
the opera-
tion of the
mineral
laws

That within the States of Missouri and Kansas deposits of coal, iron, lead, or other mineral be, and they are hereby, excluded from the operation of the act entitled "An act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two, and all lands in said states shall be subject to disposal as agricultural lands. (19 Stats. 52.)

AN ACT Authorizing the citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes.

Citizens of
Colorado,
Nevada and
the terri-
tories
authorized
to fell and
remove tim-
ber on the
public do-
main for
mining and
domestic
purposes

That all citizens of the United States and other persons, bona fide residents of the State of Colorado, or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said states, territories, or districts of which such citizens or persons may be at the time bona fide residents, subject to such rules and regulations as the secretary of the interior may prescribe for

the protection of the timber and of the undergrowth growing upon such lands, and for other purposes; *provided*, the provisions of this act shall not extend to railroad corporations.

SEC. 2. That it shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within the respective land districts; and, if so, they shall immediately notify the commissioner of the general land office of that fact; and all necessary expenses incurred in making such proper examination shall be paid and allowed such register and receiver in making up their next quarterly accounts.

SEC. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the secretary of the interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months. (20 Stats. 88.)

AN ACT To amend section twenty-three hundred and twenty-six of the Revised Statutes relating to suits at law affecting the title of mining claims.

That if, in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title. (21 Stats. 505.)

In action brought title not established in either party

AN ACT To amend sections twenty-three hundred and twenty-four and twenty-three hundred and twenty-five of the Revised Statutes of the United States concerning mineral lands.

That section twenty-three hundred and twenty-five of the Revised Statutes of the United States be amended by adding thereto the following words: "*Provided*, that where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits; and *provided*, that this section shall apply to all applications now pending for patents to mineral lands." (21 Stats. 61.)

Application for patent may be made by authorized agent

AN ACT To repeal the timber-culture laws, and for other purposes.

SEC. 16. That town-site entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities

Town sites on mineral lands authorized

to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such town sites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto; *provided*, that no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant. (26 Stats. 1095.)

Lands entered under the mineral laws not included in restriction to 320 acres

SEC. 17. That reservoir sites located or selected and to be located and selected under the provisions of "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes," and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs, excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs, and that the provisions of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not include lands entered or sought to be entered under mineral land laws.

AN ACT To authorize the entry of lands chiefly valuable for building stone under the placer mining laws.

Entry of lands chiefly valuable for building stone under the placer mining laws

Any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mining claims. Lands reserved for the benefit of the public schools or donated to any States shall not be subject to entry under this section. Nothing contained in this section shall be construed to repeal section 471 of title 16 relating to the establishment of national forests (27 Stats. 348; 30 U. S. C. A. § 161).

AN ACT Extending the mining laws to saline lands.

That all unoccupied public lands in the United States containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, are hereby declared to be subject to location and purchase under the provisions of the law relating to placer-mining claims; *provided*, that the same person shall not locate or enter more than one claim hereunder. (31 Stats. 745.)

Mining laws
extended to
saline lands

AN ACT To provide for stock-raising homesteads, and for other purposes.

SEC. 9. That all entries made and patents issued under the provisions of this act shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal. Any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented, as provided by this act, for the purpose of prospecting for coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee, and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on such lands by reason of such prospecting. Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal or other minerals, first upon securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or undertaking to be in form and in accordance with rules and regulations prescribed by the secretary of the interior and to be filed with and approved by the register and receiver of the local land office of the district wherein the land is situate, subject to appeal to the commissioner of the general land office; *provided*, that all patents issued for the coal

Coal and
mineral
deposits
reserved

Disposal
under min-
ing laws

Locating
and
prospecting
allowed

Surface en-
tries for
mining
purposes
permitted
Conditions

Proviso

Mining pat-
ents subject
to grazing
rights, etc.

or other mineral deposits herein reserved shall contain appropriate notation declaring them to be subject to the provisions of this act with reference to the disposition, occupancy, and use of the land as permitted to an entryman under this act. (Act December 19, 1916, 39 Stats. 862.)

AN ACT Changing the period for doing annual assessment work on unpatented mineral claims from the calendar year to the fiscal year beginning July 1 each year.

That section 2 of "An act to amend sections 2324 and 2325 of the Revised Statutes of the United States concerning mineral lands," approved January 22, 1880, be, and the same is hereby, amended to read as follows:

Changing
period for
annual
assessment
work

"SEC. 2. That section 2324 of the Revised Statutes of the United States be amended by adding the following words: '*Provided*, that the period within which the work required to be done annually on all unpatented mineral claims located since May 10, 1872, including such claims in the Territory of Alaska, shall commence at 12 o'clock meridian on the first day of July succeeding the date of location of such claim; *provided, further*, that on all such valid existing claims the annual period ending December 31, 1921, shall continue to 12 o'clock meridian July 1, 1922.' " Approved August 24, 1921 (42 Stats. 186.)

Leasing
Act

A synopsis of the act of February 25, 1920, commonly called the "Leasing Act," 44 U. S. Code, Part I, p. 964, § 181, fully annotated, may be found in Report XX of State Mineralogist, p. 218.

AN ACT Providing a civil government for Alaska.

Mining laws
extended
to the
district of
Alaska

SEC. 8. That the said district of Alaska is hereby created a land district, and a United States land office for said district is hereby located at Sitka. The commissioner provided for by this act to reside at Sitka shall be an ex officio register of said land office, and the clerk provided for by this act shall be ex officio receiver of public moneys, and the marshal provided for by this act shall be ex officio surveyor general of said district and the laws of the United States relating to mining claims, and the rights incident thereto shall, from and after the passage of this act, be in full force and effect in said district, under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, approved by the President; *Provided*, That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: *And provided further*, That parties who have located mines or mineral privileges therein under the laws of the United States applicable to the public domain, or who have occupied and improved or exercised acts of ownership over such claims, shall not be disturbed therein,

but shall be allowed to perfect their title to such claims by payment as aforesaid: *And provided also*, That the land not exceeding six hundred and forty acres at any station now occupied as missionary stations among the Indian tribes in said section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which said missionary stations respectively belong until action by Congress. But nothing contained in this act shall be construed to put in force in said district the general land laws of the United States. (23 Stats. 24.)

AN ACT To modify and amend the mining laws in their application to the Territory of Alaska, and for other purposes.

That no association placer-mining claim shall hereafter be located in Alaska in excess of forty acres, and on every placer-mining claim hereafter located in Alaska, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, including the year of location, for each and every twenty acres or excess fraction thereof.

Alaska
Association
placer-min-
ing claims
limited
Assessment
required

SEC. 2. That no person shall hereafter locate any placer-mining claim in Alaska as attorney for another unless he is duly authorized thereto by a power of attorney in writing, duly acknowledged and recorded in any recorder's office in the judicial division where the location is made. Any person so authorized may locate placer-mining claims for not more than two individuals or one association under such power of attorney, but no such agent or attorney shall be authorized or permitted to locate more than two placer-mining claims for any one principal or association during any calendar month, and no placer-mining claims shall hereafter be located in Alaska except under the limitations of this act.

Location by
attorneys

Restriction

SEC. 3. That no person shall hereafter locate, cause or procure to be located, for himself more than two placer-mining claims in any calendar month: *Provided*, That one or both of such locations may be included in an association claim.

Number of
locations
limited
Proviso
Ownership

SEC. 4. That no placer-mining claim hereafter located in Alaska shall be patented which shall contain a greater area than is fixed by law, nor which is longer than three times its greatest width.

Area of
claims

SEC. 5. That any placer-mining claim attempted to be located in violation of this act shall be null and void, and the whole area thereof may be located by any qualified locator as if no such prior attempt had been made. (37 Stats. 242, 243.)

Effect of
violations

AN ACT Extending the homestead laws and providing for rights of way for railroads in the district of Alaska, and for other purposes.

SEC. 13. That native-born citizens of the Dominion of Canada shall be accorded in said district of Alaska the same mining rights and privileges accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada or the local laws, rules

Mining
rights in
Alaska to
native-born
citizens
of the
Dominion
of Canada

and regulations; but no greater rights shall be thus accorded than citizens of the United States, or persons who have declared their intention to become such, may enjoy in said district of Alaska; and the Secretary of the Interior shall from time to time promulgate and enforce rules and regulations to carry this provision into effect. (30 Stats. 415.)

AN ACT To amend the laws governing labor or improvements upon mining claims in Alaska.

Annual im-
provements,
etc.,
required on
mining
claims

Filing
affidavits

Contents

Prima facie
evidence of
performance
of work,
etc.

Forfeiture

Officer be-
fore whom
affidavits
may be
made
(R. S., Secs.
5392, 5393,
p. 1045)

Time of
filing

Fee

That during each year and until patent has been issued therefor, at least one hundred dollars' worth of labor shall be performed or improvements made on, or for the benefit or development of, in accordance with existing law, each mining claim in the district of Alaska heretofore or hereafter located. And the locator or owner of such claim or some other person having knowledge of the facts may also make and file with the said recorder of the district in which the claims shall be situate an affidavit showing the performance of labor or making of improvements to the amount of one hundred dollars as afore-said and specify the character and extent of such work. Such affidavit shall set forth the following: First, the name or number of the mining claims and where situated; second, the number of days' work done and the character and value of the improvements placed thereon; third, the date of the performance of such labor and of making improvements; fourth, at whose instance the work was done or the improvements made; fifth, the actual amount paid for work and improvement, and by whom paid when the same was not done by the owner. Such affidavit shall be prima facie evidence of the performance of such work or making of such improvements, but if such affidavits be not filed within the time fixed by this act the burden of proof shall be upon the claimant to establish the performance of such annual work and improvements. And upon failure of the locator or owner of any such claim to comply with the provisions of this act, as to performance of work and improvements, such claim shall become forfeited and open to location by others as if no location of the same had ever been made. The affidavits required hereby may be made before any officer authorized to administer oaths, and the provisions of sections fifty-three hundred and ninety-two and fifty-three hundred and ninety-three of the Revised Statutes are hereby extended to such affidavits. Said affidavits shall be filed not later than ninety days after the close of the year in which such work is performed.

SEC. 2. That the recorders for the several divisions or districts of Alaska shall collect the sum of one dollar and fifty cents as a fee for the filing, recording, and indexing said annual proofs of work and improvements for each claim so recorded. (35 Stats. 1243.)

AN ACT Extending the time in which to file adverse claims and institute adverse suits against mineral entries in the District of Alaska.

That in the District of Alaska adverse claims authorized and provided for in sections twenty-three hundred and twenty-five and twenty-three hundred and twenty-six, United States Revised Statutes, may be filed at any time during the sixty days' period of publication or within eight months thereafter, and the adverse suits authorized and provided for in section twenty-three hundred and twenty-six, United States Revised Statutes, may be instituted at any time within sixty days after the filing of said claims in the local land office. (36 Stats. 459.)

Time
extended
for filing
adverse
mineral
claims, etc.,
in Alaska
(R. S.,
Secs. 2325,
2326, pp.
426, 427)

For act to supplement the mining laws of the United States in their application to the Territory of Alaska; providing for the location and possession of mining claims in Alaska and repealing all acts and parts of acts in conflict therewith to the extent of such conflicts see Sess. Laws of Alaska, 1913, p. 283.

Alaskan
Territorial
legislation

For a collection of miscellaneous territorial legislation see 3 Lindley, Mines, pp. 2432, 2433.

RULES OF PRACTICE

(Before the U. S. Land Department)

[Approved December 9, 1910; effective February 1, 1911; reprint September 1, 1926, with amendments.]

51 L. D. 547

PROCEEDINGS BEFORE REGISTERS

INITIATION OF CONTESTS

RULE 1. Contests may be initiated by any person seeking to acquire title to, or claiming an interest in, the land involved, against a party to any entry, filing, or other claim under laws of congress relating to the public lands, because of priority of claim, or for any sufficient cause affecting the legality or validity of the claim, not shown by the records of the land department.

Any protest or application to contest filed by any other person shall be forthwith referred to the division inspector, who will promptly investigate the same and recommend appropriate action.

APPLICATION TO CONTEST

RULE 2. Any person desiring to institute a contest must file, in duplicate, with the register, application in that behalf, together with statement under oath containing:

(a) Name and residence of each party adversely interested, including the age of each heir of any deceased entryman.

(b) Description and character of the land involved.

(c) Reference, so far as known to the applicant, to any proceedings pending for the acquisition of title to or the use of such lands.

(d) Statement, in ordinary and concise language, of the facts constituting the grounds of contest.

(e) Statement of the law under which applicant intends to acquire title and facts showing that he is qualified to do so.

(f) That the proceeding is not collusive or speculative, but is instituted and will be diligently pursued in good faith.

(g) Application that affiant be allowed to prove said allegations and that the entry, filing, or other claim be canceled.

(h) Address to which papers shall be sent for service on such applicant.

RULE 3.¹ The statements in the application must be corroborated by the affidavit of at least one witness having such personal knowledge of the facts in relation to the contested entry as, if proven, would render it subject to cancellation, and these facts must be set forth in his affidavit.

RULE 4. The register may allow any application to contest without reference thereof to the commissioner; but he must immediately forward

¹ Amended Sept. 23, 1915.

copy thereof to the Commissioner of the General Land Office, who will promptly cause proper notations to be made upon the records, and no patent or other evidence of title shall issue until and unless the case is closed in favor of the contestee.

CONTEST NOTICE

RULE 5. The register shall act promptly upon all applications to contest, and upon the allowance of any such application shall issue notice, directed to the persons adversely interested, containing:

(a) The names of the parties, description of the land involved, and identification, by appropriate reference, of the proceeding against which the contest is directed.

(b) Notice that unless the adverse party appears and answers the allegation of said contest within 30 days after service of notice the allegations of the contest will be taken as confessed.

(For contents of notice when publication is ordered, see Rule 9.)

SERVICE OF NOTICE

RULE 6. Notice of contest may be served on the adverse party personally or by publication.

RULE 7. Personal service of notice of contest may be made by any person over the age of 18 years, or by registered mail; when served by registered mail, proof thereof must be accompanied by post office registry return receipt, showing personal delivery to the party to whom the same is directed; when service is made personally, proof thereof shall be by written acknowledgment of the person served, or by affidavit of the person serving the same, showing personal delivery of the party served; except when service is made by publication, copy of the affidavit of contest must be served with such notice.

When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir.² If the heirs of the entryman are nonresident or unknown, notice may be served upon them by publication as hereinafter provided. If the person to be personally served is an infant under 14 years of age or a person who has been legally adjudged of unsound mind, service of notice shall be made by delivering a copy of the notice to the statutory guardian or committee of such infant or person of unsound mind, if there be one; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

RULE 8.³ Unless notice of contest is personally served within 30 days after issuance of such notice and proof thereof made not later than 30 days after such service, or if service by publication is ordered, unless publication is commenced within 20 days after such order and proof of service of notice by publication is made not later than 20 days after the fourth publication, as specified in Rule 10, the contest shall abate; *provided*, that if the defendant makes answer without questioning the service or the proof of service of said notice, the contest will proceed without further requirement in those particulars.⁴

² Amended July 13, 1921.

³ Amended Nov. 15, 1912, and Jan. 6, 1925.

⁴ Construed in 54 L. D. 232.

SERVING NOTICE BY PUBLICATION

RULE 9. Notice of contest may be given by publication only when it appears, by affidavit by or on behalf of the contestant, filed within 30 days after the allowance of application to contest and within 10 days after its execution, that the adverse party can not be found, after due diligence and inquiry, made for the purpose of obtaining service of notice of contest within 15 days prior to the presentation of such affidavit, of the postmaster at the place of address of such adverse party appearing on the records of the land office and of the postmaster nearest the land in controversy and also of named persons residing in the vicinity of the land.

Such affidavit must state the last address of the adverse party as ascertained by the person executing the same.

The published notice of contest must give the names of the parties thereto, description of the land involved, identification by appropriate reference of the proceeding against which the contest is directed, the substance of the charges contained in the affidavit of contest, and a statement that upon failure to answer within 20 days after the completion of publication of such notice the allegations of said affidavit of contest will be taken as confessed.

The affidavit of contest need not be published.

There shall be published with the notice a statement of the dates of publication.

RULE 10.⁵ Service of notice by publication shall be made by publishing notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and if no newspaper be printed in such county, then in a newspaper printed in the county nearest to such land.

Copy of the notice as published, together with copy of the affidavit of contest, shall be sent notice by the contestant within 10 days after the first publication of such notice by registered mail directed to the party for service upon whom such publication is being made at the last address of such party as shown by the records of the land office and also at the address named in the affidavit for publication, and also at the post office nearest the land.

Copy of the notice as published shall be posted in the office of the register and also in a conspicuous place upon the land involved, such posting to be made within 10 days after the first publication of notice as hereinabove provided.

RULE 11.⁶ Proof of publication of notice shall be by copy of the notice as published attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the same, showing the publication thereof in accordance with these rules.

Proof of posting shall be by affidavit of the person who posted notice on the land, and the certificate of the register as to posting in the district land office.

Proof of the mailing of notice shall be by affidavit of the person who mailed the notice, attached to the postmaster's receipt for the letter or (if delivered) the registry return receipt.

⁵ Amended March 7, 1911.

⁶ Amended January 6, 1925.

DEFECTIVE SERVICE OF NOTICE

RULE 12. No contest proceeding shall abate because of any defect in the manner of service of notice in any case where copy of the notice or affidavit of contest is shown to have been received by the person to be served; but in such case the time to answer may be extended in the discretion of the register.⁷

ANSWER BY CONTESTEE

RULE 13. Within 30 days after personal service of notice and affidavit of contest as above provided, or, if service is made by publication, within 20 days after the fourth publication, as prescribed by these rules, the party served must file with the register answer, under oath, specifically meeting and responding to the allegations of the contest, together with proof of service of a copy thereof upon the contestant by delivery of such copy at the address designated in the application to contest, or personally in the manner provided for the personal service of notice of contest.

Such answer shall contain or be accompanied by the address at which all notices or other papers shall be sent for service upon the party answering.

FAILURE TO ANSWER

RULE 14.⁸ Upon failure to serve and file answer as herein provided, the allegations of the contest will be taken as confessed, and the register will forthwith forward the case, with recommendation thereon, to the general land office, and notify the parties by ordinary mail of the action taken.

DATE AND NOTICE OF TRIAL

RULE 15. Upon the filing of answer and proof of service thereof the register will forthwith fix a time and place for taking testimony, and notify all parties thereof by registered-letter mail not less than 20 days in advance of the date fixed.

PLACE OF SERVICE OF PAPERS

RULE 16. Proof of delivery of papers required to be served upon the contestant at the place designated under clause "h" of Rule 2 in the application to contest, and upon any adverse party at the place designated in the answer, or at such other place as may be designated in writing by the person to be served, shall be sufficient for all purposes; and where notice of contest has been given by registered mail, and the registry-return receipt shows the same to have been received by the adverse party, proof of delivery at the address at which such notice was so received shall, in the absence of other direction by such adverse party, be sufficient.

Where a party has appeared and is represented by counsel, service of papers upon such counsel shall be sufficient.

CONTINUANCE

RULE 17. Hearing may be postponed because of absence of a material witness when the party applying for continuance makes affidavit,

⁷ Construed in 54 L. D. 230.

⁸ Amended April 17, 1926.

and it appears to the satisfaction of the officer presiding at such hearing that—

(a) The matter to which such witness would testify, if present, is material.

(b) That proper diligence has been exercised to procure his attendance, and that his absence is without procurement or consent of the party on whose behalf continuance is sought.

(c) That affiant believes the attendance of said witness can be had at the time to which continuance is sought.

(d) That the continuance is not sought for mere purposes of delay.

RULE 18. One continuance only shall be allowed to either party on account of absence of witnesses, unless the party applying for further continuance shall, at the same time, apply for order to take the testimony of the alleged absent witness by deposition.

RULE 19. No continuance shall be granted if the opposite party shall admit that the witness on account of whose absence continuance is desired would, if present, testify as stated in the application for continuance.

Continuances will be granted on behalf of the United States when the public interest requires the same, without affidavit on the part of the government.

DEPOSITIONS AND INTERROGATORIES

RULE 20. Testimony may be taken by deposition when it appears by affidavit that—

(a) The witness resides more than 50 miles, by the usual traveled route, from the place of trial.

(b) The witness resides without, or is about to leave, the state or territory, or is absent therefrom.

(c) From any cause it is apprehended that the witness may be unable to, or will refuse to, attend the hearing, in which case the deposition will be used only in the event personal attendance of the witness can not be obtained.

RULE 21. The party desiring to take deposition must serve upon the adverse party and file with the register affidavit setting forth the name and address of the witness and one or more of the above-named grounds for taking such deposition, and that the testimony sought is material; which affidavit must be accompanied by proposed interrogatories to be propounded to the witness.

RULE 22. The adverse party will, within 10 days after service of affidavit and interrogatories, as provided in the preceding rule, serve and file cross-interrogatories.

RULE 23. After the expiration of 10 days from the service of affidavit for the taking of deposition and direct interrogatories, commission to take the deposition shall be issued by the register directed to any officer authorized to administer oaths within the county where such deposition is to be taken, which commission shall be accompanied by a copy of all interrogatories filed.

Ten days' notice of the time and place of taking such deposition shall be given by the party in whose behalf such deposition is to be taken, to the adverse party.

RULE 24. The officer before whom such deposition is taken shall cause each interrogatory to be written out, and the answer thereto inserted immediately thereafter, and said deposition, when completed, shall be read over to the witness and by him subscribed and sworn to in the usual manner before the witness is discharged, and said officer will thereupon attach his certificate to said deposition, stating that the same was subscribed and sworn to at the time and place therein mentioned.

RULE 25. The deposition, when completed and certified as aforesaid, together with the commission and interrogatories, must be inclosed in a sealed package, indorsed with the title of the proceeding in which the same is taken, and returned by mail or express to the register, who will indorse thereon the date of reception thereof, and the time of opening said deposition.

RULE 26. If the officer designated to take the deposition has no official seal, certificate of his official character under seal must accompany the return of the deposition.

RULE 27. Deposition may, by stipulation filed with the register, be taken before any officer authorized to administer oaths, and either by oral examination or upon written interrogatories.

RULE 28. Testimony may, by order of the register and after such notice as he may direct, be taken by deposition before a United States commissioner, or other officer authorized to administer oaths near the land in controversy, at a time and place to be designated in a notice of such taking of testimony. The officer before whom such testimony is taken will, at the completion of the taking thereof, cause the same to be certified to, sealed, and transmitted to the register in the like manner as is provided with reference to depositions.

RULE 29. No charge will be made by the register for examining testimony taken by deposition.

RULE 30. Officers designated to take testimony will be allowed to charge such fees as are chargeable for similar services in the local courts, the same to be taxed in the same manner as costs are taxed by registers.

RULE 31. When the officer designated to take deposition can not act at the time fixed for taking the same, such deposition may be taken at the same time and place before any other qualified officer designated for that purpose by the officer named in the commission or by agreement of the parties.

RULE 32. No order for the taking of testimony shall be issued until after the expiration of time allowed for the filing of answer.

TRIALS

RULE 33. The register and other officers taking testimony may exclude from the trial all witnesses except the one testifying and the parties to the proceeding.

RULE 34. The register will be careful to reach, if possible, the exact condition and status of the land involved in any contest, and will ascertain all the facts having any bearing upon the rights of parties in interest; to this end said officer should, whenever necessary, personally interrogate and direct the examination of a witness.

RULE 35. In preemption cases the register will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of persons claiming; the steps taken to mark and secure the claim; and the exact status of the land at that date as shown upon the records of his office.

RULE 36. In like manner, under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined.

RULE 37. Due opportunity will be allowed opposing claimants to cross-examine witnesses.

RULE 38. Objections to evidence will be duly noted, but not ruled upon, by the register, and such objections will be considered by the commissioner. Officers before whom testimony is taken will summarily stop examination which is obviously irrelevant.

RULE 39. At the time set for hearing, or at any time to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing.

When testimony is taken in shorthand the stenographic notes must be transcribed, and the transcription subscribed by the witness and attested by the officer before whom the testimony was taken; *provided, however*, that when the parties shall, by stipulation, filed with the record, so agree, or when the defendant has failed to appear, or fails to participate in the trial, and the contestant shall in writing so request, such subscription may be dispensed with.

The transcript of testimony shall, in all cases, be accompanied by certificate of the officer or officers before whom the same was taken, showing that each witness was duly sworn before testifying; and, by affidavit of the stenographer who took the testimony, that the transcription thereof is correct.

RULE 40. If a defendant demurs to the sufficiency of the evidence, the register will forthwith rule thereon. If such demurrer is overruled, and the defendant elects to introduce no evidence, no further opportunity will be afforded him to submit proofs.

When testimony is taken, before an officer other than the register, demurrer to the evidence will be received and noted, but no ruling made thereon, and the taking of evidence on behalf of the defendant will be proceeded with; the register will rule upon such demurrer when the record is submitted for his consideration.

If said demurrer is sustained, the register will not be required to examine the defendant's testimony. If, however, the demurrer be overruled, all the evidence will be considered and decision rendered thereon.

Upon the completion of the evidence in a contest proceeding, the register will render a report and opinion thereon making full and specific reference to the posting and annotations upon the records.

RULE 41. The register will, in writing, notify the parties to any proceeding of the conclusion therein, and that 15 days will be allowed from the receipt of such notice to move for new trial upon the ground of newly discovered evidence, and that if no motion for new trial is made, 30 days will be allowed from the receipt of such notice within which to appeal to the commissioner.

NEW TRIAL

RULE 42. The decision of the register will be vacated and new trial granted only upon the ground of newly discovered evidence, in accordance with the practice applicable to new trials in courts of justice; *provided, however*, that no such application shall be granted except upon showing that the substantial rights of the applicant have been injuriously affected.

No appeal will be allowed from an order granting new trial, but the register will proceed at the earliest practicable time to retry the case, and will, so far as possible, use the testimony theretofore taken without reexamination of same witnesses, confining the taking of testimony to the newly discovered evidence.

RULE 43. Notice of motion for new trial, setting forth the grounds thereof, and accompanied by copies of all papers not already on file to be used in support of such motion, shall be served upon the adverse party, and, together with proof of service, filed with the register not more than 15 days after notice of decision; the adverse party shall, within 10 days after such notice, serve and file affidavits or other papers to be used by him in opposition to such motion.

RULE 44. Motions for new trial will not be considered or decided in the first instance by the commissioner or the Secretary of the Interior, or otherwise than on review of the decision thereof by the register.

RULE 45. If motion for new trial is not made, or if made and not allowed, the register will, at the expiration of the time for appeal, promptly forward the same, with the testimony and all papers in the case, to the commissioner, with letter of transmittal, describing the case by its title, nature of the contest, and the land involved.

The register will not, after forwarding of decision, as above provided, take further action in the case unless so instructed by the commissioner.

FINAL PROOF PENDING CONTEST

RULE 46.⁹ The pendency of a contest will excuse the submission of final proof on the entry involved until a reasonable time after the disposition of the proceedings, but final or commutation proof may be submitted at any stage thereof. The payment of the final commissions or purchase money, as the case may be, should be deferred until the case is closed, when, if the contest is dismissed and the proof is found satisfactory, claimant will be allowed 30 days from notice within which to pay all sums due and furnish a nonalienation affidavit, upon receipt of which the proper form of final certificate will issue.

In such cases the fee for reducing the proof testimony to writing must be paid at the time the proof is submitted.

The final proof should be retained in the district land office until the record in the contest case is forwarded to the general land office, but will not be considered in determining the merits of the contest, though it may be used for the purpose of cross-examination during the trial.

In such cases the party making the proof will at the time of submitting the same be required to pay the fees for reducing the testimony to writing.

⁹ Amended May 16, 1916.

APPEALS TO COMMISSIONER

RULE 47. No appeal from the action or decision of the register will be considered unless notice thereof is served and filed in the district land office in the manner and within the time specified in these rules.

RULE 48. Notice of appeal from the decision of the register shall be served and filed with such register within 30 days after receipt of notice of decision; *provided, however*, that when motion for new trial is presented and denied, notice of such appeal shall be served within 15 days after receipt of notice of the denial of said motion.

RULE 49. No person who has failed to answer the contest affidavit, or, having answered, has failed to appear at the hearing, shall be allowed an appeal from the final action or decision of the register.

RULE 50. Such notice of appeal must be in writing, and set forth in clear, concise language the grounds of the appeal, in the form of specifications of error, which shall be separately stated and numbered; where error is based upon insufficiency of the evidence to justify the decision, in the assignment thereof the particulars wherein it is deemed insufficient must be specifically set forth in the notice. All grounds of error not assigned or noticed and argued in the brief will be considered as waived.

Upon failure to serve and file notice of appeal as herein provided the case will be closed.

RULE 51. When any party fails to move for a new trial or to appeal from the decision of the register within the time specified, such decision shall, as to such party, be final and will not be disturbed except in case of fraud or gross irregularity.

No case will be remanded for any defect which does not materially affect the aggrieved party.

RULE 52. All documents received by the register must be kept on file and the date of filing noted thereon; no papers will, under any circumstances, be removed from the files or from the custody of the register, but access to the same, under proper regulations, and so as not to interfere with transactions of public business, will be permitted to the parties or their attorneys.

COSTS AND APPORTIONMENT THEREOF

RULE 53. A contestant claiming preference right of entry under the second section of the act of May 14, 1880 (21 Stats. 140), must pay the cost of contest. In other cases each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses; the cost of noting motions, objections, and exceptions must be paid by the party on whose behalf the same are made.

RULE 54. Accumulation of excessive costs will not be permitted. When the officer before whom testimony is being taken shall rule that a course of examination is irrelevant, the same will not proceed except at the sole cost of the party insisting thereon and upon his depositing the amount reasonably sufficient to pay therefor.

RULE 55. Where a party contesting a claim shall by virtue of actual settlement and improvement establish his right of entry of the land in contest under the preemption, homestead, or desert-land laws

by virtue of settlement and improvement without reference to the act of May 14, 1880, the costs of contest will be imposed as prescribed in the second clause of Rule 53.

RULE 56. The only cost of contest chargeable by registers are the legal fees for reducing testimony to writing. No other contest fees or costs will be allowed to or charged by those officers, directly or indirectly.

RULE 57. Registers may at any time require either party to give security for costs, including expense of taking and transcribing testimony.

RULE 58. Upon the filing of the transcript of the testimony in the local office, any excess in the sum deposited as security for costs of transcribing testimony will be returned to the parties depositing the same.

RULE 59. When hearings are ordered on behalf of the government, all costs incurred on its behalf will be paid from the proper appropriation, and when, upon the discovery of reason for suspension in the usual course of examination of entries and contest, hearings are ordered between contending parties, the costs will be paid as required by Rule 53.

RULE 60. The costs provided for by the preceding rules will be collected by the register when the parties are brought before him in obedience to the order for hearing.

Rule 61 was abolished by Circular No. 962, approved October 10, 1924 (50 L. D. 656).

PREPARATION OF NOTICES

RULE 62. All notices and other papers not required to be served by the register must be prepared and served by the respective parties.

RULE 63. The register will require proper provision to be made for such notices not specifically provided for in these rules as may become necessary in the usual progress of the case to final decision.

APPEAL FROM DECISION REJECTING APPLICATION TO ENTER PUBLIC LANDS

RULE 64. To facilitate appeals from his action relative to applications to file, enter, or locate upon the public lands, the register will—

(a) Indorse upon every rejected application the date of presentation and reasons for rejection.

(b) Promptly advise the party in interest of the action and of his right of appeal.

(c) Note upon his records a memorandum of the transaction.

RULE 65. The party aggrieved will be allowed 30 days from receipt of notice in which to file notice of appeal in the district land office. The notice of appeal, when filed, will be forwarded to the general land office with full report upon the case, which should recite all the facts and proceedings had and must embrace the following particulars:

(a) The original application, with reasons for the rejection thereof.

(b) Description of the tract involved and statement of its status, as shown by the records of the district office.

(c) Reference to all entries, filings, annotations, memorandum, and correspondence shown by the record relating to said tract and to the proceedings had.

II

PROCEEDINGS BEFORE THE DISTRICT CADASTRAL ENGINEER

RULE 66. The proceedings in hearings and contests before the district cadastral engineer shall, as to notices, depositions, and other matters, be governed as nearly as may be by the rules prescribed for proceedings before registers, unless otherwise provided by law.

III

PROCEEDINGS BEFORE THE COMMISSIONER OF THE GENERAL LAND OFFICE AND SECRETARY OF THE INTERIOR

EXAMINATION AND ARGUMENT

RULE 67. The commissioner will cause notice to be given to each party in interest whose address is known of any order or decision affecting the merits of the case or the regular order of proceedings therein.

RULE 68. No additional evidence will be admitted or considered by the commissioner unless offered under stipulation of the parties or in support of a mineral application or protest; *provided, however*, that the commissioner may order further investigation made or evidence submitted upon particular matters to be by him specifically designated.

Affidavits or other ex parte statements filed in the office of the commissioner will not be considered in finally determining any controversy upon the merits.

RULE 69. After receipt of the record by the commissioner 30 days will be allowed to expire before any action is taken thereon, unless, in the judgment of the commissioner, public policy or private necessity shall require summary action, in which event he will proceed at his discretion, first notifying the attorneys of record of his intention so to do; *provided*, that where no appeal has been filed the case may be immediately considered and disposed of.

RULE 70. If brief is not filed before a case is reached in its order for examination, the argument will be considered closed, and no further argument or motion of any kind will be entertained, except upon application and upon good cause appearing to the commissioner therefor.

RULE 71. In the discretion of the commissioner, oral argument may be presented, at a time to be fixed by him and upon notice to opposing counsel, which notice shall specify the time for such argument and the specific matter to be discussed. Except as herein provided, oral hearings or suggestions will not be allowed.

REHEARINGS

RULE 72. No motion for rehearing of any decision rendered by the Commissioner of the General Land Office will be allowed.

MOTIONS

RULE 73. No motion shall be entertained or considered in any case after the record has been transmitted to a reviewing officer.

In ex parte cases, where the entryman has been allowed by the commissioner to furnish additional evidence or to show cause, or, in the alternative, to appeal, both the evidence or showing and the appeal are filed, the commissioner shall pass upon the evidence or showing submitted, and, if found sufficient, note the appeal as closed. If such evidence or showing be found insufficient, the appeal will be forwarded to the secretary as in other cases.

APPEAL FROM THE COMMISSIONER TO THE SECRETARY

RULE 74. Except as herein otherwise provided, an appeal may be taken to the Secretary of the Interior from the final decision of the commissioner in any proceeding relating to the disposal of the public lands and private claims.

RULE 75. No appeal shall be had from the action of the commissioner affirming the decision of the register in any case where the party adversely affected shall have failed to appeal from the decision of said register.

RULE 76. Notice of appeal from the commissioner's decision must be served upon the adverse party and filed in the office of the register, or in the general land office within 30 days from the date of service of notice of such decision.¹⁰

RULE 77. When the commissioner considers an appeal defective he will notify the party thereof; and if the defect be not cured within 15 days from the date of receipt of such notice, the appeal may be dismissed and the case closed.

RULE 78. In proceedings before the commissioner in which he shall decide that a party has no right to appeal to the secretary, such party may apply to the secretary for an order directing the commissioner to certify said proceedings to the secretary and suspend action until the secretary shall pass upon the same; such application shall be in writing, under oath, and fully and specifically set forth the grounds upon which the same is made.

RULE 79. When the commissioner shall decide against the right of appeal he will suspend action on the case for 20 days from service of notice of such decision to enable the party against whom the decision is rendered to apply to the secretary for an order certifying the record as hereinabove provided.

RULE 80. The appellant will be allowed 20 days after service of notice of appeal within which to serve and file brief and specification of error, as provided by Rule 50, the adverse party 20 days after service of such within which to serve and file reply thereto; appellant will be allowed 10 days after service of such reply within which to serve and file response; *provided, however*, that if either party is not represented by counsel having offices in the city of Washington, 10 days in addition to each period above specified will be allowed within which to serve and file the respective briefs.

¹⁰ Construed in 54 L. D. 145, 146.

No arguments otherwise than above provided shall be made or filed without permission of the secretary or commissioner granted upon notice to the adverse party.

RULE 81. (Abolished.)

ORAL ARGUMENT BEFORE THE SECRETARY

RULE 82.¹¹ Oral argument in any case pending before the Secretary of the Interior will be allowed, on motion, in the discretion of the secretary, at a time to be fixed by him, after notice to the parties. The counsel for each party will be allowed only one-half an hour, unless an extension of time is ordered before the argument begins.

REHEARING OF SECRETARY'S DECISION

RULE 83.¹² Motions for rehearing before the secretary must be filed within 30 days after receipt of notice of the decision complained of and will act as a supersedeas of the decision until otherwise directed by the secretary. Such motions, briefs, and arguments must not be served on the opposite party and must be filed directly with the Secretary of the Interior, Washington, D. C.

Any such motion must state concisely and specifically the grounds upon which the motion for rehearing is based and be accompanied by brief and argument in support thereof.

If proper grounds are not shown the rehearing will be denied and sent to the files of the general land office, whereupon the commissioner will proceed to execute the decision before rendered. If upon examination grounds sufficient for rehearing are shown, a rehearing will be granted and the moving party will be notified that he will be allowed 15 days from receipt of notice within which to serve a copy of his motion, together with all argument in support thereof, on the opposite party, who will be allowed 30 days thereafter in which to file and serve answer, brief, and argument. Thereafter the cause or matter will be again considered and appropriate action taken, which may consist either in adhering to the former decision or modifying or vacating the same, or the making of any further or other order deemed warranted.

As applied to the Territory of Alaska, the periods of time granted by this rule shall be doubled.

MOTIONS FOR REVIEW AND REREVIEW

RULE 84. Motions for review and rereview are hereby abolished.

SUPERVISORY POWER OF SECRETARY

RULE 85. Motion for the exercise of supervisory power will be considered only when accompanied by positive showing of extraordinary emergency or exigency demanding the exercise of such authority.

In proceedings before the Secretary of the Interior the same rules shall govern, in so far as applicable, as are provided for proceedings before the Commissioner of the General Land Office.

RULE 86. No rule here prescribed shall be construed to deprive the Secretary of the Interior of any direct or supervisory power conferred upon him by law.

¹¹ Amended Nov. 6, 1911.

¹² Amended Oct. 25, 1915.

ATTORNEYS

RULE 87.¹³ Every attorney, before practicing before the Department of the Interior and its bureaus, must comply with the requirements of the regulations prescribed by the Secretary of the Interior pursuant to section 5 of the act of July 4, 1884 (23 Stats. 101).

RULE 88. In all cases where any party is represented by attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any notice or other paper relating to such proceedings upon such attorney will be deemed notice to the party in interest.

Where a party is represented by more than one attorney service of notice or other papers upon one of said attorneys shall be sufficient.

RULE 89. No person hereafter appearing as a party or attorney in any case shall be entitled to notice of any proceeding therein who does not, at the time of appearance, file in the office in which the case is pending a statement showing his name and post-office address and the name and post-office address of the party whom he represents.

RULE 90. Any attorney in good standing employed, and whose appearance is regularly entered in any case pending before the department, will be allowed full opportunity to consult the records therein, together with abstracts, field notes, tract books, and correspondence which is not deemed privileged and confidential.

RULE 91. Verbal or other inquiries by parties or counsel directed to any employee of the department, except the commissioner, assistant commissioner, or chief of the division of the general land office, or the secretary and assistant secretaries, the solicitor, members of the board of appeals, or the supervising attorney, or with the consent of one or more of said officers, is expressly forbidden.

RULE 92. Abuse of the privilege of examining records of the department or violation of the foregoing rule by any attorney will be treated as sufficient for institution of disbarment proceedings.

SERVICE OF NOTICE

RULE 94.¹⁴ Fifteen days, exclusive of the day of mailing, will be allowed for transmission of notice or other papers by mail from the general land office, except in case of notice to resident attorneys, in which case one day will be allowed.

In computing time for service of papers under these rules of practice the first day shall be excluded and the last day included; *provided*, that where the last day is a Sunday, a legal holiday, or half holiday such time shall include the next full business day.

RULE 95.¹⁵ Notice of all motions and proceedings before the commissioner or secretary, except as specified below, shall be served upon parties or counsel personally or by registered mail, and no motion will be entertained except on proof of service of notice thereof. As to motions for rehearing, petitions for certiorari and petitions for the exercise of supervisory authority before the secretary, service of notice shall be made only after such proceeding has been entertained and service directed, as provided by Rule 83.

¹³ Amended April 9, 1915.

¹⁴ Amended April 30, 1917.

¹⁵ Amended Sept. 28, 1917.

RULE 96. Ex parte proceedings and proceedings in which the adverse party does not appear will, as to notice of decision, time for appeal, and filing of exceptions and arguments, be governed by the rules prescribed in other cases, so far as the same are applicable. In such cases the commissioner or secretary may, pursuant to application and upon good cause being shown therefor, permit additional evidence to be presented for the purpose of curing defects in the proofs of record.

INTERVENTION

RULE 97. No person shall be allowed to intervene in any case except upon application therefor, under oath, showing his interest therein.

HOW TRANSFEREES AND INCUMBRANCERS MAY ENTITLE THEMSELVES TO NOTICE OF CONTEST OR OTHER PROCEEDINGS

RULE 98.¹⁶ Transferees and incumbrancers of land the title to which is claimed or is in process of acquisition under any public-land law shall, upon filing notice of the transfer or incumbrance in the district land office, become entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting such land which is required to be given the original entryman or claimant. Every such notice of a transfer or incumbrance must be forthwith noted upon the records of the district land office and be promptly reported to the general land office, where like notation thereof will be made. Thereafter such transferee or incumbrancer, as well as the entryman, must be made a party defendant to any proceeding against the entry.

ACKNOWLEDGMENT OF THE FILING OF APPLICATIONS AND OTHER PAPERS

RULE 99.¹⁷ The secretary and the commissioner of the general land office will not acknowledge the receipt of papers forwarded by mail, but if a prepared receipt is forwarded to a district land office with any paper the register will sign and return the receipt to the party who forwarded the same, after inserting the date and the serial number.

NOTICE OF PREFERENCE RIGHT

RULE 100. Where preference right of entry is awarded under section 2 of the Act of May 14, 1880 (21 Stats. 140), the register will, after service of notice of such right upon contestant and the expiration of the 30 days allowed for exercise thereof, transmit to the commissioner of the general land office by special letter the evidence of service for filing with the canceled entry record. A fee of \$1 for giving such notice must be tendered to the register of the district land office before any application for the land will be approved.

WILLIAM SPRY,
Commissioner.

Approved:

E. C. FINNEY,
First Assistant Secretary.

¹⁶ Adopted Sept. 23, 1915.

¹⁷ Adopted Nov. 10, 1915.

CALIFORNIAN STATUTES

PUBLIC RESOURCES CODE—CHAPTER IV*

[Chap. 93, Stats. 1939]

MINING CLAIMS, TUNNEL RIGHTS AND MILL SITES

Section	Section
2301. Lode claims, how located.	2313. Recording.
2302. Boundaries.	2314. Yearly work required.
2303. Placer claim.	2315. Record.
2304. Discovery shaft.	2316. Recording fees.
2305. Discovery work on placer claims.	2317. Delinquent co-owners, notice to.
2306. Discovery work on relocations.	2318. Notice as evidence of delinquency.
2306.5. Discovery work on placer claims, previously located.	2319. Response by delinquent.
2307. Locations, when void.	2320. Acknowledgment of delinquent contribution.
2308. Tunnel rights, location of	2321. Development work unperformed.
2309. Boundaries.	2322. Records as evidence.
2310. Amended notice.	2323. Copies, same.
2311. Surveyed claims.	2324. Effect on mining districts.
2312. Mill location.	

§ 2301. Any person, a citizen of the United States, or who has declared his intention to become a citizen, who discovers a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposit, may locate a claim upon such vein or lode, by defining the boundaries of the claim, in the manner hereinafter described, and by posting a notice of such location, at the point of discovery. The notice shall contain:

- (a) The name of the lode or claim.
- (b) The name of the locator or locators.
- (c) The number of linear feet claimed in length along the course of the vein, each way from the point of discovery, with the width on each side of the center of the claim, and the general course of the vein or lode, as near as may be.
- (d) The date of location.
- (e) Such a description of the claim by reference to some natural object, or permanent monument, as will identify the claim located.

§ 2302. The locator or locators of any lode mining claim shall define the boundaries of the claim so that they may be readily traced, but in no case shall the claim extend more than fifteen hundred feet along the course of the vein or lode, nor more than three hundred feet on either side thereof as measured from the center line of the vein at the surface. Within sixty days after the date of location of any lode mining claim hereafter located, the locator or locators shall erect at each corner of the claim and at the center of each end line, or the nearest accessible points thereto, a post not less than four inches in diameter, or a stone monument at least eighteen inches high.

* § 1 states: "The provisions of this code, in so far as they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments."

§ 2303. The location of a placer claim shall be made in the following manner:

(a) By posting thereon, upon a tree, rock in place, stone, post, or monument, a notice of location, containing the name of the claim, name of the locator or locators, date of location, number of feet or acreage claimed, and such a description of the claim by reference to some natural object or permanent monument as will identify the claim located.

(b) By marking the boundaries so that they may be readily traced. Where the United States survey has been extended over the land embraced in the location, however, the claim may be taken by legal subdivisions and no other reference than those of such survey shall be required, and the boundaries of a claim so located and described need not be staked or monumented. The description by legal subdivisions shall be deemed the equivalent of marking.

§ 2304. (a) Within ninety days after the date of location of any lode mining or placer claim hereafter located, the locator or locators thereof shall sink a discovery shaft upon the claim to a depth of at least ten feet from the lowest part of the rim of the shaft at the surface, or shall drive a tunnel, adit, or open cut upon the claim to at least ten feet below the surface.

(b) *In lieu of the discovery work required by paragraph (a) of this section, the locator of a placer mining claim may, within ninety days of the date of location, excavate an open cut upon the claim, removing from the cut not less than seven cubic yards of material.*

§ 2305. Within ninety days after the date of location of any placer mining claim hereafter located containing more than twenty acres, the locator or locators thereof shall perform at least one dollar's worth of work for each acre included in the claim. This work may all be done at one place on the claim if so desired, and shall be actual mining development work exclusive of cabins, buildings, or other surface structures. Nothing in this section shall be construed as a modification of the requirements of section 2304 of this code.

§ 2306. The relocation of any lode or placer mining location which is subject to relocation *shall be made* as an original location is required to be made, except that the relocater may either sink a new shaft upon the ground relocated to a depth of at least ten feet from the lowest part of the rim of the shaft at the surface, or drive a new tunnel, adit, or open cut upon the ground to at least ten feet below the surface; or the relocater may sink the original discovery shaft ten feet deeper than it is at the time of relocation, or drive the original tunnel, adit, or open cut upon the claim ten feet further or, *in the case of placer mining claims, relocater may either excavate a new open cut upon the claim, removing from the cut not less than seven cubic yards of material, or remove from the original open cut not less than seven additional cubic yards of material.*

§ 2306.5. As to any placer mining claim which has been otherwise validly located or relocated since the enactment of sections 1426da and 1426de of the Civil Code and as to which claim the locator or relocater has not performed the work thereon required by those sections for the reason that literal compliance therewith was not feasible, the locator or relocater may perfect his claim by excavating an open cut thereon and removing from the cut not less than seven cubic yards of material;

provided, that such work shall be completed within ninety days after the effective date of this section.

§ 2307. The failure or neglect of the locator or locators to comply with the requirements of sections 2301, 2302, 2304, 2305 or 2306 of this code shall render the location null and void, and no portion of the area within the location shall be subject to relocation by the same locator or locators within the period of three years from the date of the void location.

§ 2308. The locator of a tunnel right or location shall locate his tunnel right or location by posting a notice of location at the face or point of commencement of the tunnel, which notice shall contain:

(a) The name of the locator or locators.

(b) The date of the location.

(c) The proposed course or direction of the tunnel.

(d) Such a description of the tunnel by reference to some natural object or permanent monument as will identify the claim or tunnel right.

§ 2309. The boundary lines of the tunnel shall be established by stakes or monuments placed along the lines at an interval of not more than six hundred feet from the face or point of commencement of the tunnel to the terminus of three thousand feet therefrom.

§ 2310. If at any time the locator of any mining claim, or his assigns, apprehends that his original location notice was defective, erroneous, or that the requirements of the law had not been complied with before filing, or in case the original notice was made prior to the passage of this chapter, and he is desirous of securing the benefit of this chapter, such locator, or his assigns, may file an amended notice, subject to the provisions of this chapter, if such amended location notice does not interfere with the existing rights of others at the time of posting and filing the amended location notice. No amended location notice or the record thereof shall preclude the claimant or claimants from proving any such title as he or they may have held under previous locations.

§ 2311. Where a locator, or his assigns, has the boundaries and corners of his claim established by a United States deputy mineral surveyor, or a licensed surveyor of this State, and his claim connected with the corner of the public or minor surveys of an established initial point, and incorporates into the record of the claim the field notes of such survey, and attaches to and files with such location notice a certificate of the surveyor setting forth (a) that the survey was actually made by him, giving the date thereof, (b) the name of the claim surveyed and the location thereof, and (c) that the description incorporated in the declaratory statement is sufficient to identify the claim, such survey and certificate becomes a part of the record, and such record is prima facie evidence of the facts therein contained.

§ 2312. The proprietor of a vein or lode claim or mine, or the owner of a quartz mill or reduction works, or any person qualified by the laws of the United States may locate not more than five acres of nonmineral land as a mill site. The location shall be made in the same manner as required for locating placer claims.

§ 2313. Within ninety days after the posting of his notice of location upon a lode mining claim, placer claim, tunnel right or location, or mill site claim or location, the locator shall record a true copy of the

notice, together with a statement of the markings of the boundaries as required in this chapter, and of the performance of the discovery work, in the office of the county recorder of the county in which such claim is situated. The county recorder shall receive a fee of one dollar for this service. [As amended: Chap. 644, Stats. 1941.]

§ 2314. The amount of work done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States, to wit: One hundred dollars annually.

§ 2315. Whenever a mine owner has performed the labor and made the improvements required by law upon any mining claim, the person in whose behalf such labor was performed or improvements made, or some one in his behalf shall, within thirty days after the time limited for performing such labor or making such improvements, make and have recorded by the county recorder, in books kept for that purpose, in the county in which the mining claim is situated, an affidavit setting forth the value of labor or improvements, the name of the claim, and the name of the owner or claimant of the claim at whose expense the labor was performed or the improvements were made. The affidavit, or a copy thereof, duly certified by the county recorder, shall be prima facie evidence of the performance of such labor or the making of such improvements, or both.

§ 2316. For recording the affidavit required under section 2315, the county recorder shall receive a fee of ten cents per folio, twenty cents for endorsement, and ten cents for indexing the name of each claim and each owner.

§ 2317. Whenever a co-owner or co-owners of a mining claim give to a delinquent co-owner or co-owners the notice in writing or notice by publication provided for in section 2324 of the Revised Statutes of the United States, an affidavit of the person giving such notice, stating the time, place, manner of service, and by whom and upon whom service was made, shall be attached to a true copy of the notice, and the notice and affidavit shall be recorded in the office of the county recorder, in books kept for that purpose, in the county in which the claim is situated, within ninety days, after the giving of the notice. For recording the notice and affidavit, the recorder shall receive the same fees as are now allowed by law for recording deeds. If the notice is given by publication in a newspaper, there shall be attached to a printed copy of the notice an affidavit of the printer or his foreman, or principal clerk of such paper, stating the date of the first, last and each insertion of the notice therein, and where the newspaper was published during that time, and the name of the newspaper. The affidavit and notice shall be recorded within one hundred eighty days after the first publication thereof.

§ 2318. The original of such notice and affidavit, or a duly certified copy of the record thereof, shall be prima facie evidence that the delinquent mentioned in section 2324 of the Revised Statutes of the United States has failed or refused to contribute his proportion of the expenditure required by that section, and of the service of publication of the notice, unless the writing or affidavit hereinafter provided for is of record.

§ 2319. If such delinquent shall, within the ninety days required by section 2324 of the Revised Statutes of the United States, contribute

to his co-owner or co-owners his proportion of such expenditures and also all costs of service of the notice required by section 2317, whether incurred for publication charges or otherwise, such co-owner or co-owners shall sign and deliver to the delinquent or delinquents a writing, stating that the delinquent or delinquents by name has, within the time required by section 2324 aforesaid, contributed his share for the year —, upon the — mine, and further stating therein the district, county, and State wherein the claim is situated, and the book and page where the location notice is recorded, if the claim was located under the provisions of this chapter. Such writing shall be recorded in the office of the county recorder of said county, for which he shall receive the same fees as are now allowed by law for recording deeds.

§ 2320. If such co-owner or co-owners fail to sign and deliver such writing to the delinquent or delinquents within twenty days after such contribution, the co-owner or co-owners so failing shall be liable to a penalty of one hundred dollars to be recovered by any person for the use of the delinquent or delinquents in any court of competent jurisdiction. If such co-owner or co-owners fail to deliver such writing within twenty days after such contribution, the delinquent, with two disinterested persons having personal knowledge of the contribution, may make affidavit setting forth in what manner, the amount of, to whom, and upon what claim, the contribution was made. Such affidavit, or a record thereof in the office of the county recorder of the county in which the claim is situated, shall be prima facie evidence of such contribution.

§ 2321. The failure or neglect of any locator of a mining claim to perform development work of the character, in the manner, and within the time required by the laws of the United States shall disqualify such locator from relocating the ground embraced in the original location or mining claim or any part thereof under the mining laws, within three years after the date of his original location, and any attempted relocation thereof by any of the original locators shall render such location void.

§ 2322. The record of any location of a mining claim, mill site, or tunnel right in the office of the county recorder, as provided in this chapter, shall be received in evidence and have the same force and effect in the courts of the State as the original notice.

§ 2323. Copies of the records of all instruments required to be recorded by this chapter, duly certified by the recorder in whose custody such records are, may be read in evidence under the same circumstances and rules as are provided by law for using copies of instruments relating to real estate, duly executed or acknowledged or proved and recorded.

§ 2324. The provisions of this chapter shall not in any manner be construed as affecting or abolishing any mining district or the rules and regulations thereof within the state.

§ 2326. Whenever any mining district in this State, organized or created under the laws of the United States, is dissolved, the officers or custodians of the records of the mining district shall deposit with the county recorder of the county, in which the district is located, all records

of location notices or other documents affecting titles to mining claims in the mining district, shown by the records of the district.

County recorders of the several counties of the State of California shall accept any location notices and other documents affecting title to mining claims of dissolved mining districts. Thereafter all such notices and documents shall be open for public inspection. [Added by amendment, Chap. 706, Stats. 1941.]

CODE OF CIVIL PROCEDURE—ARTICLE III

SUMMARY SALE OF MINES AND MINING INTEREST

The provisions of the probate law of California in relation to the summary sale of mines and mining interests are as follows:

§ 1529. When it appears from the inventory of the estate of any decedent that his estate consists in whole or in part of mines, or interests in mines, such mines or interests may be sold under the order of the court having jurisdiction of the estate, as hereinafter provided.

§ 1530. The executor or the administrator, or any heir at law, or creditor of the estate, or any partner or member of any mining company, in which interests or shares are held or owned by the estate, may file in the court a petition in writing, setting forth the general facts of the estate being then in due course of administration, and particularly describing the mine, interest, or shares which it is desired to sell, and particularly the condition and situation of the mines or mining interests, or of the mining company in which such interests or shares are held, and the grounds upon which the sale is asked to be made.

§ 1531. Upon the presentation of such petition, the court, or a judge thereof, must make an order directing all persons interested to appear before such court, at a time and place specified, not less than four or more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell such mine, mining interests, shares, or stocks, as are set forth in the petition and belonging to the estate. A copy of the order to show cause must be personally served on all persons interested in the estate, at least ten days before the time appointed for hearing the petition, or published at least four successive weeks in such newspaper as such court or judge shall specify; *provided, however*, that when it appears from the inventory and appraisalment that the value of the whole estate does not exceed the sum of two hundred and fifty dollars, the court, or a judge thereof, may at his discretion, order in lieu of publication that notices of the hearing be posted in at least three public places in the county. If all persons interested in the estate signify in writing their assent to such sale, the notice may be dispensed with.

§ 1532. If, upon hearing the petition, it appears to the satisfaction of the court that it is to the interest of the estate that such mining property or interests of the estate should be sold, or that an immediate sale is necessary in order to secure the just rights or interests of the mining partners, or tenants in common, such court must make an order authorizing the executor or administrator to sell such mining interests, mines, or shares, as hereinafter provided.

§ 1533. After the order of sale is made, all further proceedings for the sale of such mining property, and for the notice, report, and confirmation thereof, must be in conformity with the provisions of article four of this chapter.

POSTPONEMENT OF TRIAL INVOLVING TITLE TO A MINING CLAIM

"In actions involving the title to mining claims, or involving trespass for damages upon mining claims if it be made to appear to the satisfaction of the court that in order that justice may be done and the action fairly tried on its merits, it is necessary that further developments should be made underground or upon the surface of the mining claims involved in said action, the court shall grant the postponement of the trial of the action, giving the party a reasonable time in which to prepare for trial and to do said development work."

Civil Code, § 595.

ORE BUYERS LICENSE ACT, COMMONLY REFERRED TO AS "THE HIGH GRADE BILL"

PUBLIC RESOURCES CODE, CHAP. 3

[Stats. 1939, Chap. 93]

§ 2250. It is unlawful for any person to engage in the business of milling, sampling, concentrating, reducing, refining, purchasing, or receiving for sale, ores, concentrates, or amalgams bearing gold or silver, gold dust, gold or silver bullion, nuggets, or specimens without first procuring the license provided for by this chapter. Necessity
for license

§ 2251. Every person who annually mills, samples, concentrates, reduces, refines, purchases, or receives for sale such ores, concentrates, or amalgams of the total value of one thousand dollars or more, shall pay a license tax of fifteen dollars a year to the state. Every person who annually mills, samples, concentrates, reduces, refines, purchases, or receives for sale such ores, concentrates, or amalgams of the total value of less than one thousand dollars shall pay a license tax of two dollars a year to the state. License tax

§ 2252. No license shall be granted to any person, firm, or association unless such person and the members of such firm or association are bona fide residents of the state, and of good moral character. No license shall be granted to any joint stock company or corporation unless such company or corporation is duly qualified to exist and do business under the laws of this state or unless such company or corporation has complied with all the laws of this state authorizing foreign corporations to do business in this state. License
qualifications

This chapter shall not be construed as requiring a license for any mill, sampler, concentration or reduction plant used exclusively by the owner in sampling, milling, or reducing or concentrating ores produced by such owner. Ores produced by
owner

§ 2253. The application for a license to carry on such business shall be made to the State Mineralogist, and shall contain Application
for license

the full names and addresses of the applicants, if natural persons, and in the case of firms and associations the full names and addresses of the members thereof, and in the case of corporations, the full names and addresses of the officers and directors thereof, and the place or places where the business is to be carried on. The application shall be sworn to by the person making it.

Term and display of license § 2254. Every license granted shall date from the first day of the month in which it is issued and expire on the thirty-first day of the following December. The license or copies thereof shall be kept conspicuously displayed in the place or places of business of the licensee within the state.

Notice of application § 2255. Every application shall be filed not less than thirty days prior to the granting of the license. Notice of the filing of the application shall be posted in the office of the State Mineralogist and shall be published, at the cost of the applicant, once a week for three successive weeks in a newspaper, published in the county or counties where the business is to be carried on.

Protests and hearings § 2256. Protest may be made by any person to the issuing of a license, and when such protests are filed with the State Mineralogist, he shall give notice of and hold a public hearing upon the protest before issuing the license. The State Mineralogist may reject any application for a license after a hearing upon the protest.

Revocation § 2257. The State Mineralogist may revoke any license for failure on the part of the licensee to observe any of the provisions of this chapter, or when the licensee has violated the provisions of any law of the state relating to ore buying or of any law relating to larceny or receiving stolen property, but no license shall be revoked except upon written charges filed by two or more reputable persons as accusers, specifying the violations of law for which revocation is sought, and only after a public hearing as in the case of protests against the granting of licenses.

Written charges or protests: § 2258. Charges or protests against any licensee or applicant shall be made in writing to the State Mineralogist. Reasonable notice thereof, not less than three days, shall be given to the licensee or applicant by serving upon him a copy of the charges or protest. A hearing shall be had before the State Mineralogist within one week from the date of the filing of the charges or protest, and no adjournment shall be taken for longer than one week. A daily calendar shall be kept of all hearings by the State Mineralogist, which shall be posted in a conspicuous place in his office for at least three days before the date of such hearing. The State Mineralogist shall keep a record of all charges, protest, and hearings, and may refuse to issue and shall suspend or revoke any license for any good cause shown, within the meaning and purpose of this chapter.

Action following decision § 2259. When it is shown that any licensee or applicant, either before or after conviction, is guilty of any conduct in

violation of this or any law relating to such business, the State Mineralogist shall suspend or revoke the license of the licensee, or reject the application of the applicant, but notice of the proposed action shall be presented to and a reasonable opportunity shall be given to the licensee or applicant to be heard in his defense.

§ 2260. Whenever, for any reason, a license is revoked, the State Mineralogist shall not issue another license to the licensee until the expiration of at least one year from the date of revocation of the license. The State Mineralogist shall decide all matters submitted to him within thirty days from the time he takes them under advisement.

Issuance of
new license
after revoca-
tion

§ 2261. An application for a review of any order made by the State Mineralogist granting, refusing, or revoking a license may be made to the superior court in and for the county where the aggrieved party resides, which court shall have the right and jurisdiction to review the action of the State Mineralogist, by any person who may feel aggrieved by the order and whose name appears in the record of the proceedings before the State Mineralogist as a licensee, applicant for license, protestant, or accuser. The application shall be made by filing, in the office of the clerk of the court, a certified copy of the transcript of the proceedings before the State Mineralogist, including copies of all papers filed therein, accompanied by a short petition naming the person applying for the review as plaintiff and the State Mineralogist as defendant, and praying for a review of the order.

Judicial
review of
orders

Procedure

§ 2262. Within ten days after filing the application, the party applying for the review shall serve written notice of its pendency upon the State Mineralogist. If the review is of an order granting a license or refusing to revoke a license, the notice shall also be served upon the person to whom the license was granted or whose license was permitted to remain in force.

Notice

The notice may be served by personal delivery or by registered mail, and proof of service shall be made to the satisfaction of the court if not admitted.

§ 2263. No review shall be allowed unless taken within thirty days after entry of the order. The court shall try all such reviews upon the transcript and such evidence as may be offered and admitted. When the court has finally determined any such proceeding, it shall forthwith cause its order in the premises to be certified to the State Mineralogist. The costs in the review shall be awarded at the discretion of the court, and if any costs are awarded against the State Mineralogist, they shall be paid out of funds arising from the payment of license fees under this chapter. When a review of an order of the State Mineralogist revoking a license is had, such review shall operate as a stay upon the order.

Hearing and
decision

Costs

Review
operates
as stay
upon order

§ 2264. For the making of the transcript the State Mineralogist shall collect from the person ordering it twenty-five

Fee for
transcript

cents per folio of one hundred words and twenty-five cents for certifying it.

Record of
ores, etc.,
handled § 2265. Every person engaged in a business licensed under this chapter shall keep and preserve a book in which shall be entered at the time of the delivery of any ores, concentrates or amalgams bearing gold or silver, gold-dust, gold or silver bullion, nuggets, or specimens:

(a) The name of the person on whose behalf such ores, concentrates, gold-dust, gold or silver bullion, nuggets or specimens are delivered.

(b) The weight, or amount, and a short description of each lot thereof.

(c) The name and location of the mine or claim from which it is stated that the lot has been mined or procured.

(d) The name of the person delivering it.

(e) The date of delivery.

(f) Whether the person making the delivery is a lessee, superintendent, foreman, or workman in such mine.

Inspection
of record § 2266. Such book shall be open for inspection by the State Mineralogist, his deputies, officers, and agents, on every day except Sundays and legal holidays, between the hours of nine o'clock a.m. and five o'clock p.m.

If any person, on his own behalf or being duly authorized by another, makes and files an affidavit with the State Mineralogist, stating that, to his best knowledge and belief, he or his principals, as the case may be, has, within the three months next preceding the filing of the affidavit, sustained a loss of any of the property described in section 2265, by theft or trespass, and that he believes that such property was delivered to a licensee under this chapter, naming the licensee, the State Mineralogist shall forthwith issue a permit to such person to examine the book kept by such licensee as provided in this chapter. Upon the presentation of the permit to the licensee, such person may inspect and examine the entries made in such book during said period of three months, on the same terms and conditions as the State Mineralogist.

Reports of
purchases § 2267. Every licensee under this chapter shall file monthly with the State Mineralogist a report of all purchases made under this chapter. The reports shall be made upon forms prescribed by the State Mineralogist and shall contain the information required by this chapter. Any licensee who fails or refuses to comply with the provisions of this section is guilty of a misdemeanor.

Seizure of
ores as
evidence § 2268. All officers and employees empowered by law or authorized by a superior to enforce the provisions of this chapter are vested with the powers of peace officers to enforce the provisions hereof and may seize and hold any ores, concentrates, or amalgams bearing gold or silver, gold-dust, gold or silver bullion, nuggets, or specimens wherever found and whenever there appear to be reasonable grounds to believe such property has been stolen or otherwise illegally taken, and

may hold such property for use as evidence in any action which may be brought.

§ 2269. Whenever any property so seized and held appears to be no longer of use as evidence, it shall be delivered to the owner thereof upon proof of such ownership. Any person claiming ownership may file a petition in the superior court of the county of his residence showing his claim or right thereto. A copy of the petition shall be served, at least twenty days before the hearing thereof, upon the Attorney General, who shall answer the petition. Upon the hearing of the petition, the court shall try the issue as issues are tried in civil actions, and if it determines that the petitioner is entitled to the property, the court shall order it delivered to the petitioner.

Return of
ores to
owner

Procedure
to prove
ownership

§ 2270. If the ores, concentrates or amalgams are not so delivered to the owner thereof, they shall, after a period of five years from the date upon which they were seized and held, escheat to the state upon action brought by the Attorney General in the superior court in and for the county of Sacramento. All persons claiming to be owner or having any right or interest therein shall be joined as parties defendant in the action. Service of process shall be made as summons is served in other civil actions upon any known claimant and by publication thereof, before the trial of the action, at least once a week for three successive weeks in a newspaper of general circulation printed and published in the county of Sacramento.

Action to
escheat

Parties

Service of
process

§ 2271. Upon the trial, the court shall hear all parties who have appeared. If any party proves ownership or that he has any right or interest therein, the court shall make an order for the delivery of the property to him, or the sale thereof and a distribution of the proceeds to discharge the right or interest which he has therein, the balance of the proceeds to escheat to the state; otherwise, the court shall declare the property to have escheated to the State. Thereafter the State Mineralogist may sell the ores, concentrates and amalgams not theretofore sold by court order and shall account for and report the proceeds of the sale to the State Controller and at the same time remit the money to the state treasury to be credited to the General Fund. [Amended, Chap. 211, Stats. 1943].

Trial and
judgment

Sale of
escheated
ores

§ 2272. Any licensee under this chapter who fails or neglects or refuses to keep and preserve the book herein provided for, shall forfeit his license and shall also be liable to the penalties provided in section 2274.

Penalties
for failure
to keep
record, etc.

Any licensee or other person who knowingly makes any false entries upon such book, or knowingly enters or causes to be entered any false or fictitious names upon such book, shall be liable to the penalties provided in section 2274.

Any licensee who refuses to permit any duly authorized person to inspect such book or the entries therein shall forfeit his license and is guilty of a misdemeanor.

Penalty for making false statements § 2273. Any person who knowingly makes any false statements concerning any of the facts required to be stated in sections 2265 or 2266 is guilty of a misdemeanor.

Enforcement of chapter § 2274. Any violation of sections 2250, 2251, 2252, 2265, 2266, 2267, or 2272 is a misdemeanor, punishable by a fine of not less than one hundred dollars and not more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or both such fine and imprisonment. The State Mineralogist shall notify the district attorney of the county in which the offense occurs of any such violation, and the district attorney shall institute criminal proceedings for the enforcement of this chapter before any court of competent jurisdiction.

Disposition of forfeited bail and fines All forfeited bail and fines received under the provisions of this section shall be sent without delay by the magistrate receiving them, fifty per cent to the State Treasurer, to be deposited in the State Treasury to the credit of the General Fund and fifty per cent to the city treasurer of the city, if incorporated, or to the county treasurer of the county in which the prosecution is conducted. [Amended, Chap. 211, Stats. 1943].

Remittance of receipts § 2275. All money received by the State Mineralogist under this chapter, shall be accounted for and reported monthly to the State Controller, to be remitted by the Controller, to the State Treasury to the credit of the General Fund. All money deposited with the State Mineralogist for fees for licenses which have not been granted shall be retained by him in the trust fund of the division to be remitted to the State Treasurer upon issuance of the license or returned to the applicant in case a license is refused. [Amended, Chap. 211, Stats. 1943].

(Added by Stats. 1939, Ch. 97, as part of codification.)

MINER'S INCH DEFINED

An act fixing and defining a miner's inch of water.

(Approved March 23, 1901.)

The people of the state of California, represented in senate and assembly, do enact as follows:

SECTION 1. The standard miner's inch of water shall be equivalent or equal to one and one-half cubic feet of water per minute, measured through any aperture or orifice.

SEC. 2. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 3. This act shall be in effect and force sixty days from and after its passage.

FENCING ABANDONED SHAFTS

An act to provide for the covering or fencing of abandoned mining shafts, pits or excavations, the penalty, and also the penalty for removing or destroying the covering or fencing from same.

(Approved March 20, 1903.)

The people of the state of California, represented in senate and assembly do enact as follows:

SECTION 1. All abandoned mining shafts, pits or other abandoned excavations dangerous to passers-by or live stock shall be securely covered or fenced, and kept so, by the owners of the land or persons in charge of the same, on which such shafts, pits or other excavations are located. Any person or persons failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

SEC. 2. All abandoned mining shafts, pits or other excavations situated on unoccupied public lands may be securely covered or fenced by order of the board of supervisors of the county wherein the same is situated, and it shall be the duty of the board of supervisors to keep the same securely fenced or covered whenever it appears to them, by proof submitted, that the same is dangerous or unsafe to man or beast. The cost of said covering or fencing to be a county charge.

SEC. 3. Any person or persons maliciously removing or destroying any covering or fencing placed around or over any shaft, pit or other excavation, as hereinbefore provided, shall be deemed guilty of a misdemeanor.

SEC. 4. This act shall take effect six months from the day of passage.

**PROTECTION OF DOMESTIC WATER SUPPLIES FROM
POLLUTION BY PLACER MINING OPERATIONS**

[Chap. 1215, Stats. 1941.]

The people of the State of California do enact as follows:

SECTION 1. Any person, firm or corporation, other than placer mine operators who hold permits from the California Debris Commission to operate, who has been engaged or who shall engage in the operation of a placer mine on any stream or on the watershed of any stream tributary directly or indirectly to the Sacramento or San Joaquin rivers shall record in the office of the county recorder of the county in which its mine is situate, within 60 days from and after the effective date of this act, or, if operations are commenced after the effective date, then within 30 days after the commencement of such operations, a verified statement verified by the operator or by some one in behalf of the operator, showing:

(1) A description of the ground proposed to be mined by placer mining methods, described by United States Government subdivisions where possible.

(2) The names and addresses of the owners of the ground.

(3) The names and addresses of the operators of the mine.

(4) The proposed means or methods of placer mining operation.

(5) The means which the operator proposes to use to prevent the pollution of any stream by the effluent from such operations.

In the event an owner or operator changes his address, or of a transfer of ownership or change of operator of any such mining property, then within 10 days after any such transfer or change, a notice setting forth the names and addresses of the new owners or operators shall be filed in the office of the county recorder.

SEC. 2. No placer mining operator who does not hold a permit to operate from the California Debris Commission shall mine by placer process on any stream or on the watershed of any stream tributary directly or indirectly to the Sacramento or San Joaquin rivers without taking the following precautions to prevent pollution of the stream by the effluent from operations:

(1) Constructing a settling pond or ponds of sufficient size to permit the clarification of water used in the mining processes before the water is discharged into the stream.

(2) Mixing with the effluent from mining operations aluminum sulphate and lime, or an equivalent clarifying substance which will cause the solid material in the effluent to coagulate and thus avoid rendering the water in the stream unfit for domestic water supply purposes.

(3) Notwithstanding the provisions of Subdivision 2 of this section, any placer miner who is operating by dredging process and who desires to transport his dredger across a stream where the expense of constructing settling ponds in the stream itself would, in the opinion of the operator, be unduly heavy, shall have the right to conduct the dredger across the stream without constructing a settling pond under the following procedure: The operator shall give to the clerk or secretary, as the case may be, of each city or district owning or operating a domestic water supply the clarity of which is likely to be affected by the crossing operation, notice of the intent of the operator to cross the stream. Such notice shall be given at least seven days in advance of the date that the operator expects to cross the stream with his dredger. Upon the expiration of the notice the operator may during the following 48 hours conduct his dredger across the stream even though some turbidity may be caused by the crossing operation. Having crossed the stream the operator shall thereupon and thereafter in its further operations observe the provisions of Subdivision 2 of this section.

SEC. 3. Any person, firm or corporation who fails to record the notice provided for in Section 1, or to install the protective devices or to give the notice provided for in Section 2, or both, shall be guilty of a misdemeanor. The operation of any placer mine on ground not covered by a permit to the operator from the California Debris Commission, without compliance with the provisions of both Sections 1 and 2 hereof, is hereby declared to be a public nuisance which may be enjoined upon suit brought by the district attorney of the county in which the operation has been conducted, or by any city or district whose domestic water supply is rendered unfit or dangerous for human consumption by the acts, or failure to act, of the operator. The superior court of the county in which the operation is conducted shall have jurisdiction to hear and determine the action and to award such relief as may be proper therein. Nothing in this act contained, however, shall be deemed or construed to deprive the State, any city, city and county, county, district, person, firm or corporation of any right to bring and maintain any action or proceeding, in

any jurisdiction, which it was entitled to bring or maintain prior to the enactment of this act, or to receive or obtain in any such action any remedy accorded to it under existing law.

SEC. 4. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The Legislature hereby declares that it would have passed this act and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

MINING DEBRIS IN THE TRINITY AND KLAMATH RIVER FISH AND GAME DISTRICT

This act amends Section 482 of the Fish and Game Code. [Chapter 306, Stats. 1937.]

482. (a) It is unlawful to conduct any mining operations in the Trinity and Klamath River fish and game district between July 1 and November 30, both dates inclusive, except when the debris, substances, tailings or other effluent from such operations do not and can not pass into the waters in said district.

(b) It is unlawful between July 1 and November 30, both dates inclusive, to pollute, muddy, contaminate, or roil the waters of the Trinity and Klamath River fish and game district. It is unlawful between said dates to deposit in or cause, suffer, or procure to be deposited in, permit to pass into or place where it can pass into said waters, any debris, substance or tailings from hydraulic, placer, milling or other mining operation affecting the clarity of said waters. The clarity of said waters shall be deemed affected when said waters at a point a distance of one mile below the confluence of the Klamath River and the Salmon River or at a point a distance of one mile below the confluence of the South Fork of the Trinity River and the Trinity River contain fifty (50) parts per million, by weight, of suspended matter, not including the natural turbidity of said river or rivers.

(c) It is unlawful, between July 1 and November 30, both dates inclusive, to carry on or operate any hydraulic mine of any kind on, along, or in any waters flowing into said Trinity and Klamath River district, provided, however, nothing herein contained shall prevent the operation of a hydraulic mine where the tailings, substance, or debris, or other effluent therefrom, does not or will not pass into said waters of said Trinity and Klamath River fish and game district, between said dates, and provided further that any person, firm or corporation engaged in hydraulic mining shall have the right until the fifteenth day of July to use water for the purpose of cleaning up.

(d) Any structure or contrivance which causes or contributes, in whole or in part, to the condition, the causing of which is in this section prohibited, is a public nuisance, and any person, firm or corporation maintaining or permitting the same shall be guilty of maintaining a public nuisance, and it shall be the duty of the district attorney of the

county where the condition occurs or the acts creating the public nuisance occur, to bring action to abate such public nuisance.

(e) Any person, firm, or corporation violating any of the provisions of this section is guilty of a misdemeanor.

SEC. 2. This act is hereby declared to be an urgency measure necessary for the immediate preservation of public peace, health and safety within the meaning of Section 1 of Article IV of the Constitution of this State. A statement of the facts constituting such necessity is as follows:

The streams guarded against pollution by this act constitute an extensive recreation district and the preservation of the mining industry is vital to the State of California and in order that the health of visitors be protected and recreation facilities protected during the summer months of this year it is necessary that this act take immediate effect.

NAVIGABLE WATERS

Section 2349 of the Political Code was amended (Chap. 276, Stats. 1933) by adding the following to the list of "streams and waters * * * declared navigable and to the public ways:"

The Klamath River from its mouth in Del Norte County to its confluence with the Shasta River in the county of Siskiyou; provided that nothing herein shall abrogate or infringe existing mining rights or the rights of locating or operating mining claims thereon, otherwise than by being made subject to the public rights of way herein declared.

MISCELLANEOUS PENAL LEGISLATION AFFECTING ORES

Alaska. Taking ore, mineral amalgam, etc., with intent to steal the same. Sess. Laws (1913), p. 37. To prevent interference with samples or bullion and making false returns. Sess. Laws (1923), p. 93.

Arizona. Falsifying of ores. Rev. Stats. (1901), p. 1269, § 484. Salting of ores. *Id.*, p. 1272, § 494.

California. See sections of Public Resources Code quoted *supra*.

Colorado. Mingling base metals with ore. 2 Mills' Ann. Stats. (1925), p. 886, § 1997. Ore buyers—purchasing ores unlawfully. 3 *Id.*, pp. 2182, 2182c, §§ 4961 to 4966. Substituting ores. *Id.*, p. 2183. Regulating the purchase of ores, p. 2183, §§ 4968, 4969.

Idaho. Alteration of ores. Comp. Stats. (1919), p. 2374, § 8497. Use of fraudulent scales for ore. *Id.*, p. 2374, § 8496.

Montana. Penalty for commingling foreign substances with ores. 1 Choates Rev. Codes (1921), p. 1267, § 3438. Making false samples of ore. *Id.*, p. 203, § 11421. Use of false pretenses in selling mines. 4 *Id.*, p. 203, § 11419. Changing samples for assay. 4 *Id.*, p. 203, § 11420.

Nevada. Recovery of stolen ore and metals. 2 Hillyer's Comp. Laws (1930), pp. 1227 to 1229, §§ 4181 to 4184. Regulating purchase of ore, p. 1230, §§ 4185 to 4189. Regulation of persons handling ore for others. *Id.*, p. 1231, § 4190. Changing value of ores. 5 *Id.*, p. 3177, § 10398.

New Mexico. Ore purchases and receipts. Comp. Laws (1929), p. 1147, §§ 88-301. Purchasing stolen ore. *Id.*, p. 1148, § 88.

Oregon. Robbing or attempting to rob any flume, rocker, quartz mill, etc., or trespassing upon a mining claim with intent to commit a felony. 1 Code (1930), p. 1294, §§ 14-374. Penalty for conversion of mine yield by bailee. 3 Code, p. 4285, § 53.

Utah. Larceny from mining claim, etc. Comp. Laws (1917), p. 1603, § 8286. Salting mines, fraudulent assay. *Id.*, p. 1611, § 8348. Changing samples or assay certificate. *Id.*, p. 1611, § 8349. Making or publishing false assay. *Id.*, p. 1189, § 3823. Wrongful taking of ores, Rev. Stats., § 1536.

Washington. Salting mines. 1 Pierce's Code (1921), p. 1189, § 3821. Changing samples. *Id.*, p. 1189, § 3822. False samples. *Id.*, p. 1189, § 3823.

Wyoming. Providing penalty for salting. Comp. Laws (1920), p. 808, § 4386. Having or receiving counterfeit gold dust. *Id.*, p. 1277, § 7288.

The Canadian (Ontario) act concerning "Highgrading" is entitled "The Unwrought Metal Sales Act" of 1924. Its provisions, in part, are as follows, viz:

"3. Every person who not being a license holder buys, sells, deals in, receives or disposes of by way of barter, pledge or otherwise, either as principal or agent, any unwrought metal, shall be guilty of an offense against this act and shall, on summary conviction thereof, in the case of a first offense, incur a penalty not exceeding \$500 and in addition thereto may be imprisoned for a period not exceeding one year, and for a second or any subsequent offense, shall incur a penalty not exceeding \$1,000 and shall be imprisoned for a period of one year, 1924 c. 20, s. 4.

"4. Every person who knowingly purchases or in any other manner acquires possession of unwrought metal from any person other than a license holder shall be guilty of an offense and shall on summary conviction thereof incur the penalties provided in section 3, 1924, c. 20, s. 5."

APPENDIX B
FORMS AND PRECEDENTS

APPENDIX B

FORMS AND PRECEDENTS

FORM No. 1

AFFIDAVIT OF ANNUAL EXPENDITURE

State of----- }
 County of----- } ss.

-----being first duly sworn, deposes and says, that at least-----dollars' worth of labor was performed (or improvements made) between the ----- day of -----, 19-----, and the ----- day of -----, 19-----, upon the ----- Mining Claim, situate in the ----- Mining District, County of-----, State of ----- Such expenditure was made by or at the expense of ----- the owner of said claim, for the purpose of complying with the laws of the United States and of the State of ----- pertaining to annual assessment work.

Said labor, so performed, (or improvements so made) being as follows:

(Describe the labor or improvements.)

 Subscribed and sworn to before me this ----- day of -----, 19-----.

 Notary Public.

In and for the County of ----- State of -----
 My commission expires -----.

FORM No. 2

NON-MINERAL AFFIDAVIT

Department of the Interior

U. S. Land Office -----, No.-----

This affidavit can be made only on personal knowledge, and can not be made on information and belief.

-----, being duly sworn according to the law, deposes and says that I am the identical person or agent for-----, who is an applicant for government title to the -----
 ----- Section -----,
 Township-----, Range-----, ----- Meridian;

that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my personal knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to my knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that the application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes; that the said land is not occupied and improved by any Indian, and that my post-office address is_____

(Sign here with full Christian name.)

NOTE.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 125, U. S. Criminal Code, below.)

I HEREBY CERTIFY that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by_____);

(Give full name and post-office address.)

that I verily believe affiant to be a credible witness and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office, in_____

(Town.)

_____within the_____

(County and State.)

_____land district, this_____day
of_____, 19_____.

(Official designation of officer.)

UNITED STATES CRIMINAL CODE.—CHAP. 6

Sec. 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall wilfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years. (Act, March 4, 1909. 35 Stat., 1111.)

FORM No. 3

ARTICLES OF INCORPORATION

(As Articles of Incorporation must conform to the laws of the State or Territory within which the corporation may be organized, only the "purposes" of a mining corporation are subjoined.)

The business, objects and purposes to be transacted, promoted and carried on by this corporation, and the purposes for which it is formed are locating, working, developing, leasing, buying, selling, and otherwise dealing in mines, mining locations, mining claims, mining rights, mineral deposits, mill-sites, tunnel-claims or rights, water rights, mining plants, mining dredges, machinery, or works used in connection therewith. Also, to engage in and carry on the business of dredging for gold and other mineral substances or deposits, in water or upon land. Also, to engage in and carry on the business of boring for, producing, owning, holding, buying and selling petroleum oils, natural gas, asphaltum, bitumen, and other hydro-carbon substances. Also, to produce, generate, or otherwise obtain electric light, power, and heat. Also, to engage in and carry on the business of crushing, smelting, milling, calcining, refining, dressing, concentrating, cyaniding, generating, manipulating, and preparing for market gold, silver, quicksilver, lead, tin, copper, zinc, iron, or other ore, coal, slag, petroleum oil, metals, and mineral substances of all kinds; and to carry on any other reducing, smelting, or metallurgical operations which may seem conducive to any of this corporation's objects, purposes or business. Also, to engage in and carry on the business of buying, selling, manufacturing, and dealing in ores, tailings, slag, metals, mining plants, machinery, implements, conveniences, provisions and things used in connection with the business of this corporation, or required by the workmen and others employed by this corporation.

Also, the entering into partnerships, or into any arrangement for sharing profits, union of interests, cooperation, joint adventure, reciprocal concession or otherwise, with any person, firm or corporation carrying on or engaged in, or about to carry on and engage in any business or transaction which this corporation is authorized to carry on, or engage in any business or transaction capable of being conducted so as to directly or indirectly benefit this corporation. Also, to take and acquire, by purchase or exchange, or other lawful modes, and to hold, own, deal in, sell, and otherwise dispose of the capital stock or bonds of other corporations.

And, in general to do, and perform any and every other act or acts, or things, of whatsoever name or nature, incident to, growing out of or connected with the purposes, objects and business for which this corporation is formed.

FORM No. 4

APPOINTMENT OF STATUTORY AGENT *

KNOW ALL MEN BY THESE PRESENTS:

That _____, corporation organized and existing under the laws of _____, has designated, constituted, and appointed, and by these presents does

* See 9 Fletcher on Corporations, p. 9920, § 5902, n. 66.

hereby designate, constitute, and appoint_____,
 residing in_____, State of_____,
 its true and lawful attorney upon whom process issued by authority of
 or under any law of said State of_____ in any action or
 proceeding against it may be served; and service of such process on
 said representative shall constitute a valid and binding service on said
 corporation.

In witness whereof, the said corporation has caused its corporate
 name to be hereunto subscribed and its corporate seal to be hereunto
 affixed, by its officers thereunto duly authorized, this _____
 day of_____, 19_____.

FORM No. 5

AGREEMENT TO SELL *

(Precedent in *Eisleben v. Brooks*, 179 Fed. 86)

Memorandum of agreement made and entered into in duplicate
 at _____ this _____ day of_____,
 19_____, by and between_____ and_____
 both of_____ parties of the first part, and
 _____ all of_____, parties of the
 second part, witnesseth: That the parties of the first part are the own-
 ers and holders of options on the mineral rights and are in process of
 acquiring under purchase options and leases, other mineral rights in
 all, or as much thereof as can be had, of what is known as_____
 in_____ counties in the state of_____.

Money is needed for the immediate prospecting of and the purchas-
 ing of said mineral rights from said first parties, and the parties of
 the second part agree to furnish such funds.

The parties of the first part agree to convey by proper deeds and
 transfers to_____ of_____, as trustee,
 or his successor in person or corporation, all of said mineral rights
 now owned by them or whether they acquire an option thereon, or
 whether they acquire them by purchase, options or leases at any time
 in the future. The said parties of the second part agree to furnish for
 immediate use a drilling fund enough to sufficiently drill said_____
 otherwise to accept same without drilling, and as said property is
 drilled to accept for said trustee, or his successor, the mineral rights
 under any and all lands in said_____ which are now and
 in the future may be owned, purchased, optioned, or leased by said
 first parties, which are shown by ordinary methods of drilling to con-
 tain_____ paying to said first parties_____
 dollars, cash per acre for the same.

Upon completion of said drilling and purchasing, or before if
 deemed advisable, the parties hereto agree to organize a corporation for
 the division of and further development of said properties, and to which
 corporation the parties of the second part hereby subscribe and agree
 to pay in the sum of_____ dollars cash, and which organi-
 zation shall be duly incorporated under the laws of the state of_____
 _____, and its capital stock shall be issued
 fully paid and non-assessable.

* For another form, see *Cohn v. Valentine*, 88 Cal. A. 437, 263 Pac. 846.

The capital stock of said corporation shall be issued and divided as follows: The said parties of the first part are to receive-----
of said stock and the parties of the second part are to receive-----
of said stock.

It is understood that the corporation thus formed shall refund to said second parties the amount of money paid out by them to the first parties in the purchasing of said mineral rights. In the perfecting of the arrangement under this contract, it is considered and understood that the development of said properties on an extensive scale shall be carried into effect and that no less than-----fully equipped modern
-----plants shall be put into operation just as soon as the market by proper advertising, soliciting, etc., will justify.

The situation being, however, that the parties of the first part are unable to furnish capital to assist in the carrying of said operation into effect, it is hereby understood and agreed, and is the chief consideration to first parties in this contract, that said second parties shall furnish or acquire for said corporation the necessary capital for said development, and to protect first parties' interests in said corporation until such time as said corporation shall have accumulated sufficient working capital to justly protect first parties therein.

In witness whereof, the parties hereto, and to its duplicate, have set their hands the day and year first above written.

FORM No. 6

COMPROMISE OF ADVERSE CLAIM

(Precedent in St. Louis Co. v. Montana Co., 171 U. S. 650)

The terms of the agreement made this-----day of-----,
19____, by and between-----, the party of the first
part, and-----, the party of the second part, are as follows:

That in consideration of the compromise and settlement of the adverse suit brought by said party of the-----part in the
-----Court of the-----, to determine the right
of possession to the-----mining claim, as mentioned and
described in the complaint in said suit, and also of the withdrawal of
the adverse claim upon which said suit is based, and also of settling and
agreeing upon the boundary line between said-----mining
claim and the-----mining claim of said party of the
-----part, the said party of the-----part hereby
agrees and binds-----within-----days after the issuance
of the patent as applied for to make, execute and deliver to said party
of the-----part, or-----assigns a good and sufficient
deed of conveyance for

(Description)

That thereupon the said party of the-----part shall immediately dismiss said suit and withdraw said adverse claim.

That during the pendency of said patent proceedings, or during any of the times herein provided for the said party of the-----

part shall not make, nor cause to be made, any motion in said court for the dismissal of said suit, for want of prosecution, nor at all.

In witness whereof, the parties hereto, have hereunto and to its duplicate, set their hands the day and year first above written.

FORM No. 7

GRUB STAKE CONTRACT *

(Precedent in *Morrow v. Matthew*, 10 Idaho 423, 79 Pac. 196)

The terms of the agreement made this _____ day of _____, 19____, between _____, of _____, State of _____, the party of the first part, and _____, of the same place, the party of the second part, are as follows:

That the party of the first part shall forthwith proceed to _____, in the State of _____, and for _____ months from the date hereof devote his time, labor, and skill in prospecting for mineral deposits therein, and when found he shall locate mining claims thereon subject to location under the laws of the United States, the State of _____, and the local rules, regulations and customs of miners in force in the mining district in which such deposits may be situated for the joint use and benefit of the said parties hereto.

That the said parties hereto shall be equally interested in each and every mining claim so discovered, located, or which may be acquired in any manner by said party of the first part within said territory during the time aforesaid.

That the said party of the second part shall, from time to time and upon his demand, furnish the said party of the first part with such supplies, tools and instruments and other things of necessity incident to such prospecting, locating and acquiring mining claims as said party of the first part shall properly require in the keeping of this agreement on his part.

In witness whereof, the said parties hereto have hereunto, and to its duplicate, set their hands the day and year first above written.

FORM No. 8

CONTRACT WITH MINING ENGINEER

(Precedent in *Wishon v. Great Western Co.*, 29 Wash. 355, 69 Pac. 1105)

This agreement, made and entered into this _____ day of _____, 19____, between _____, of _____ in the County of _____ in the State of _____, the party of the first part, and _____ of _____ in the County of _____ and State of _____, the party of the second part, Witnesseth: That whereas, the said party of the first part is a mining engineer and expert, whose opinions and statements concerning mines and mining properties are of value and

* For form of complaint, findings of fact and conclusions of law and decree in case of fraudulent conspiracy of prospector with third parties, see *Lockhart v. Washington Co.*, 16 N. M. 223, 117 Pac. 833.

are highly regarded by those who are purchasing mines and mining property; and

Whereas, the said party of the second part is desirous of selling and disposing of those certain mines and mining property, of which the said party of the second part is the owner, hereinafter described; and is desirous of employing the said party of the first part in reporting on the said property, so-as to have his professional recommendation, or other report, upon the same, as the property may warrant. Now, therefore, this agreement witnesseth:

That for and in consideration of the services rendered and to be rendered by the said party of the first part in the sale of the said mines and mining property, which is now pending or on any sale or sales which may be made by and through the report upon said property, by the said party of the first part, at any time, or to any person whomsoever of the-----group or property, consisting of the-----and-----lode mining claims, situate at-----Mining District, County of-----and State of-----; and in consideration of the report of the said party of the first part, or any part of the said report, or any map, writing, printed matter, or other recommendation, or statement, made by said party of the first part, for and on account of the sale, which is now pending, for the price of-----dollars, or any sale or sales hereafter to be made by and through the said report, or any part thereof, of the said property, the said party of the second part covenants and agrees to and with the said party of the first part that he will pay him, said party of the first part, or his heirs or assigns, the full sum of-----dollars, to be paid immediately upon the payment of the purchase money. And it is further agreed and understood that the expenses incurred in making the trip from-----to the said property and return, and during the examination, assays, maps, etc., by the party of the first part shall be repaid to him by the said party of the second part at the time and times said expense is incurred. And the said party of the first part promises and agrees to and with the said party of the second part that he will use all his professional skill and will make a full and complete report of the said mines and mining property and will expert the same, and will do all in his power to bring about a fair and honest sale of the said property upon the terms and conditions hereinbefore set forth.

In witness whereof, the said parties hereto have hereunto and to its duplicate, set their hands the day and year first above written.

FORM No. 9

OIL WELL DRILLING CONTRACT *

(Precedent in Cook v. Columbian Co., 144 Cal. 670, 78 Pac. 287)

This agreement, made and entered into this-----day of-----, 19--, between-----, of-----, the party of the first part, and-----, of-----, the party of the second part, Witnesseth:

That the party of the second part will furnish at his own cost and expense all the machinery, tools, paraphernalia and materials of all

* For another form of Oil Well Drilling Contract, see Snyder v. Noss, 99 Okla. 142, 226 Pac. 319.

kinds, including labor, fuel, water, and any and all things of whatsoever kind and nature that may be necessary and needful (except casing, pipe and shoes) to properly perform the work of drilling or boring not less than-----feet of hole or wells, and to drill or bore the same at any one or more places on the following described land situate, lying and being in the County of-----, State of-----, and more particularly described as follows, to wit:

(Description)

as may be desired and designated by the party of the first part, for the agreed price per foot sunk, as shown and set forth in the following scale of prices, at different depths up to-----feet, and in accordance with the further terms and conditions herein contained. Provided, however, that in case the drilling of any well shall be stopped by the party of the first part for any cause after it has been begun, that the party of the first part will pay the net cost of moving the drilling outfit to any other place on the said property, where another well is to be started, in addition to the amount earned for the number of feet sunk in accordance with the said scale of prices per foot and that should work be stopped on any well, for any cause, after a depth of-----feet has been sunk, then the said party of the second part shall move the rig at his own cost and expense to the place designated by the party of the first part. That in case of abandonment of any well or wells for any cause the party of the second part will pull and remove, in a careful manner, all casing, pipe and fittings used in said well or wells that can be got out by a reasonable and faithful effort by the use of all appliances and tools ordinarily used in performing such work.

That all casing, pipe and shoes of the proper sizes necessary to be used in the well or wells will be furnished and delivered on the ground by the party of the first part and shall be of such sizes as such party may select, and the same shall be properly inserted and used in the wells by the party of the second part and carried to the bottom, if possible without diminishing the size except in cases where it is found absolutely unavailable after the use of under-reamers and other appliances, as may be necessary and proper for keeping the whole in proper shape.

That in case a body of asphaltum be encountered at any considerable depth and it is found impossible after a faithful and reasonable effort so to do that it cannot be drilled through nor penetrated by the use of any of the known tools and appliances, then the said well will be considered as completed and a settlement made in full for the depth drilled according to the said scale of prices; provided, however, that the party of the first part shall have full and free right and privilege to use and operate the machinery and outfit of the party of the second part at his own cost and expense for a period not to exceed-----, or until satisfied that the hole cannot be sunk any deeper.

That in case oil, gas or asphaltum shall be found at any depth in any well and the party of the first part shall elect to stop drilling in such well, the party of the second part shall properly test the well and leave the same in condition ready for the pump or other working appliances before moving the rig and outfit away.

It is understood by and between both parties hereto that this contract is for a total of-----feet of hole or wells, and that the party of the second part agrees to put down any one hole to a total depth of -----feet, if the ground is such that it can possibly be done, by reasonable effort, or that he will stop the drilling of any well at any depth, as directed by the party of the first part and in accordance with the said scale of prices per foot sunk, and the terms and conditions herein contained.

That the party of the first part will pay, or cause to be paid to the party of the second part the amount earned for each foot of hole sunk in accordance with the said scale of prices at times and as follows, to wit:

An advance sum of-----dollars, when the rig and outfit are on the ground and ready to commence the work of drilling;-----per cent of the amount earned as per scale when the well has been sunk to a depth of -----feet and a like-----per cent of the amount earned at the completion of each-----feet until the well is either completed or abandoned, or the work stopped by the party of the first part, when the balance in full shall be paid, after deducting the said advance payment of-----dollars.

Done in duplicate, the day and year first above written.

FORM No. 10

CONTRACT WITH INDEPENDENT CONTRACTOR

The terms of the agreement made this-----day of-----, 19----, between -----, party of the first part, and-----, party of the second part, are as follows, viz.: That the said party of the second part shall excavate or run-----lineal feet of tunnel work within the-----mining claim situate in the-----Mining District, County of-----and State of California, commencing at a point to wit:-----feet (southwest) and-----feet (west) from the (east and center monument of said claim) for the agreed sum or price of-----dollars per lineal foot; said tunnel to be-----feet in width and-----feet in height, in the clear, and to be timbered where necessary. Payment therefor by said party of the first part shall be made in full within-----days after the full completion of said work. Work upon said tunnel under this contract shall commence within-----days from the date hereof and the same shall be fully completed in proper and minerlike manner by said party of the second part on or before the thirtieth day of June next thereafter ensuing; said party of the second part to hold said party of the first part harmless as against all and every lien of laborers, miners, and mechanics, and for materials furnished.

In witness whereof the said parties hereto have hereunto, and to its duplicate, set their hands the day and year first above written.

FORM No. 11

OPTION

This agreement, made the-----day of-----, 19--, between ----- a corporation organized and existing under and by virtue of the laws of the State of-----, the party of the first part, and -----, of the County of-----, State of-----, party of the second part. Witnesseth: That the party of the first part, in consideration of-----, will sell to the party of the second part all those certain mining claims and water rights situate, lying and being within the-----Mining District, County of -----, State of -----, more particularly bounded and described as follows, to wit:

(Description)

upon the following terms and conditions, to wit:

The party of the first part will cause to be deposited in escrow in the Bank of-----in the County of-----, State of-----, at the time of the execution of this instrument, its deed in writing, good and sufficient in the law, to the party of the second part, or his assigns, of each and all of the properties hereinbefore mentioned and described.

The party of the second part is hereby granted an option to purchase all of said mining claims and water rights for the sum of-----dollars, subject to the terms and special exceptions and conditions hereof, in the following manner: That the said party of the second part shall pay in to the credit of the said party of first part at said Bank of-----, on or before 12 o'clock noon of each day specified, to wit: On or before the-----day of-----, 19--, -----per cent of the said purchase price of said properties and the balance of said purchase money in-----equal payments of-----per cent of the whole every-----months thereafter.

It is hereby agreed that all of the foregoing payments shall be made in lawful money of the United States.

It is hereby agreed that the party of the second part shall have the right to anticipate the payments of the entire unpaid purchase price of said properties at said Bank of-----, but in the event that he exercises such right he shall pay all of the unpaid installments in full; provided, that he be allowed an amount equal to-----per cent per annum on each unpaid installment for the length of time for which such installment is thus anticipated; and provided further, that such payment or payments, or any part thereof, is not derived from the proceeds of said properties, or any part thereof; and provided further, that if the party of the second part shall exercise the option conferred hereby to anticipate deferred payments, he shall give notice in writing to the party of the first part of his intention to exercise such option -----days prior to the time he shall be allowed to exercise the same.

It is further agreed that during the period from the date hereof until the final payment of the said entire purchase price of said properties is made, said party of the first part shall remain in the entire possession and control of the property hereinbefore particularly mentioned and described, except that upon the making of said first payment of said-----per cent of said purchase price of said properties the said

party of the second part may, and shall have the right to enter into and take possession of all and singular said premises and property, and commence work and make improvements thereon, and operate, mine and extract the mineral from said premises and property. That in order that said party of the first part may be fully protected hereunder, it is hereby agreed that all work done and improvements made by said party of the second part upon said premises and property under the terms hereof shall be done in a miner-like and proper manner to enable said premises to be carefully operated, and so that the mineral therein contained may be extracted in an economical and miner-like manner, and all of said work done and improvements made shall be done or made under the supervision of said party of the first part and with its consent, and to that end it is hereby agreed that Mr.-----, its superintendent, or his successor in office shall have the right to finally pass upon and approve of, or reject, any plan or portion of a plan of the party of the second part for the working and improvement of said premises and property, or any part thereof, or of any work or ditches or pipe lines which may be connected therewith. That said party of the second part hereby agrees to dispose of the proceeds of the working of said premises as obtained or received by him from time to time as follows: All of such proceeds, less the actual cost of extraction, reduction or refining, hauling and freight charges, shall be applied as a payment upon the unpaid portion of the next payment falling due hereunder upon the purchase price of said mining claims and water rights.

It is understood and agreed that in consideration of the premises, that said party of the second part shall within-----days from the date hereof enter upon said premises by his duly accredited agent or agents, mining engineer or mining engineers, mining expert or mining experts, together with proper assistants and paraphernalia constituting a proper and sufficient outfit therefor, and in a proper and miner-like manner, and at his own cost and expense, make a proper examination and test of the mineral value of said premises and properties, holding and keeping the same, and all thereof, free and clear of all costs, charges and liens for such examination and working.

It being further understood and agreed that the said party of the second part shall keep the party of the first part fully informed of said work, and permit the said party of the first part at all times, and at any time, to inspect such work, and any and all thereof; and it is further agreed that in furtherance of such examination and test said party of the second part may use and enjoy the improvements now placed upon said premises and properties together with such personal property now thereon as may be necessary or proper in the making of such examination and test; but in the event that said work is not being done to the satisfaction of the said party of the first part, it shall have the right and it is hereby given the right to cause all work being done by said party of the second part to immediately cease.

It being further distinctly understood and agreed that upon the failure on the part of the party of the second part to enter upon said premises and properties within the time and in the manner lastly hereinbefore aforesaid, this option and all rights and privileges thereunder

shall, upon and at the expiration of said-----days be instantly forfeited, canceled and annulled.

In the event that such examination is made within the time hereinbefore specified, and that thereafter the said party of the second part shall elect not to purchase said premises and properties under the terms hereof, he, the said party of the second part shall deliver to the said party of the first part, free from all cost, charges and expense to it whatsoever, copies of all data, plans, field notes, analyses, samples, photographs and other determinations and reports that he, the said party of the second part, shall have made or caused to be made, or otherwise obtained, in and about and by reason of said examination and test, the same to be so delivered within-----days after this option may have been concluded under the terms hereof.

In the event that the said party of the second part does not purchase said premises and properties, in accordance with the terms hereof, or shall default in any payment herein provided for, or this option be revoked for legal cause by the said party of the first part, any and all improvements placed upon said hereinabove described premises and properties by the said party of the second part, shall thereupon immediately become and be the property of said party of the first part, without any cost, charge or expense to it whatsoever therefor.

It is hereby further agreed that if at any time the party of the second part shall fail to make any payments herein provided for upon the said purchase price of said premises and properties at the time and place herein specified for the same to be made, the rights of the party of the second part under this option shall immediately cease and determine, and the payments which shall have been made by him therefor shall be applied as follows:

Whereas, the damage to the present or future value of the several properties affected by this agreement by a failure to purchase the same as herein provided, and the damage which may be occasioned to the same during the existence of this option prior to any breach thereof by the party of the second part, can not be estimated or established in a court of justice by reason of the difficulty of establishing hereafter the present appearance, prospects and apparent value of said hereinabove described mining claims and the changes in the appearance, prospects and value of the same at the time of such breach, and other difficulties and the consequent damage resulting thereby to the party of the first part.

It is hereby agreed that all payments and expenditures which shall have been made under this option by the party of the second part upon said premises and properties, or upon any part thereof, shall be deemed to be liquidated and assessed damages caused by the said party of the second part to the party of the first part by virtue of his failure to comply with and perform the conditions of this option and shall remain the property of the party of the first part; and the party of the second part hereby releases all claim thereto.

The party of the first part hereby agrees that it will not act nor consent to the doing of any act by it tending to alienate or encumber said premises and properties, or any part thereof, hereinabove described or which will prevent the party of the second part (upon the completion by him of all the conditions herein provided to be performed

by him) from acquiring the same rights therein as are now possessed by the party of the first part.

The said party of the second part hereby covenants and agrees to hold harmless the party of the first part hereto as against all liens and claims of mechanics for labor done and materials furnished under this option, and hereby grants to said party of the first part through its duly accredited agent, to be present at the payment and ascertain that all wages of employees of the party of the second part, and all sums of money due to contractors or subcontractors under the said party of the second part, if any, and all sums of money due for materials furnished, are paid.

The party of the second part agrees to have each and every man employed by him and working upon said premises and properties and each and every person, company or corporation from whom he buys material, sign a contract, as follows:

"In consideration of my being employed by-----or of -----purchasing material from me, I hereby covenant and agree to look alone to said-----for my pay, and I hereby waive all rights or claims that I may have in law or in equity against the properties, or any one of them, upon which said labor is bestowed or to which said material is furnished."

(All blanks to be properly filled.)

That upon a failure in any instance to properly secure such waiver of lien this option, and all rights and privileges thereunder shall be instantly forfeited, canceled, annulled and revoked.

Time is of the essence of this agreement, and upon the failure to perform any of the covenants and obligations hereby imposed upon the party of the second part, the said Bank of-----is hereby authorized and directed to deliver said deed of conveyance, and all other papers, instruments or documents which may be deposited in escrow in said bank by the parties hereto under the terms or by reason of this option to the said party of the first part, and upon the failure of the party of the second part to perform any of the conditions or obligations hereby imposed upon him, the party of the first part is hereby absolved from the performance of any conditions or covenants imposed upon it hereby.

The said Bank of-----is hereby made the sole arbiter between the parties hereto as to whether the said conditions or obligations have been performed, and the said bank's decision shall bind the respective parties; and if said bank decides that said party of the second part has not fully performed the same as herein provided, said bank shall not be restrained from the surrender of said deed of conveyance and other papers, instruments or documents as herein directed; and said Bank of-----shall be absolved from all liability hereunder, except fraud in the performance of its duties.

Upon the performance by the party of the second part of all the conditions of this option and the payment of the said full purchase price of said premises and properties as herein provided said Bank of-----shall deliver said deed of conveyance, papers, instruments and documents as may be deposited in escrow with it hereunder to the said party of the second part.

This option shall be binding upon, and run in favor of the heirs, executors, administrators, successors and assigns of each of the parties hereto except as herein specially provided.

In witness whereof, the said party of the first part has caused its corporate name to be hereunto subscribed, and its corporate seal to be hereunto affixed, by its officers thereunto duly authorized, and the said party of the second part has hereunto set his hand, in duplicate, the day and year first above written.

FORM No. 12 *

NOTICE OF NON-LIABILITY FOR LABOR OR MATERIALS FURNISHED

Notice is hereby given to all persons, that the undersigned----- is the owner of-----mine or mining claims, herein-after described, with all the improvements thereon. That said mine or mining claim now is in the possession of and is being worked and operated by-----, pursuant to a contract (*or option to purchase, or lease*) made and executed by the undersigned in favor of said-----dated-----19-----; said contract, (*or option to purchase, or lease*) to be in force up to and including-----, 19-----.

The undersigned is not working nor operating said mine or mining claim, nor any part thereof, and does not intend to work nor operate said mine or mining claim nor any part thereof, nor purchase any supplies or materials therefor, during the life of said contract, (*option to purchase, or lease*) with said-----.

The name of said mine or mining claim is-----, situate, lying and being in-----Mining District, in the County of-----, State of-----The notice of location of said mine or mining claim being duly recorded in Book-----, at page-----of-----in the office of the county recorder of said-----county, State of-----; to which said record reference is hereby made for a more particular description of said mine or mining claim.

In witness whereof, the said-----has hereunto set his hand this-----day of-----, 19-----.

FORM No. 13

OPTION AND LEASE

OPTION

This agreemnet, made and entered into by and between the----- MINING COMPANY, a corporation, duly organized and existing under and by virtue of the laws of-----, as party of the first part, and hereinafter called the-----Company, and the----- MINES COMPANY, a corporation duly organized and existing under and

* If the state statute providing for the above notice requires its verification it will be fatally defective if merely *acknowledged*. See § 825, n. 10.

by virtue of the laws of _____, as party of the second part, hereinafter called the _____ MINES COMPANY.

WITNESSETH :

WHEREAS, The _____ Company is the owner and in possession of certain lode mining claims hereinafter more particularly mentioned and described; and,

WHEREAS, The _____ Company represents that said lode mining claims, ground and premises disclose mineral deposits of great value as well as potential development of great ore bodies; and,

WHEREAS, The proper development of such ore bodies, both present and in expectancy and the proper reduction and treatment thereof will necessitate the outlay of large sums of money; and,

WHEREAS, The _____ Mines Company is able and willing to furnish the money for such development work, but only under and in accordance with the terms and subject to the conditions hereinafter set forth;

NOW THEREFORE, for and in consideration of one dollar by the _____ Mines Company to the _____ Company, paid, receipt whereof is hereby acknowledged, and for and in consideration of the mutual covenants of the parties by each to the other made and herein contained, the parties hereto agree as follows:

1. The _____ Company grants to the _____ Mines Company for _____ months from the date hereof an option upon the terms and conditions in this agreement hereinafter set forth, to receive a mining lease in the form hereto annexed and hereby referred to and made a part hereof, of said above mentioned mineral properties, being all those certain lode mining claims and mill site situate, lying and being in the _____ Mining District, in the County of _____, State of _____, more particularly described as follows:

(Description)

2. That at any time during the period of said option said _____ Mines Company shall have the right to enter into and take exclusive possession of all and singular said above described property and may as consideration for said option, prospect and explore, test, develop and work at its own discretion and at its own proper charge and expense said lode mining claims and any one or more of them, provided all work done and all improvements made by said _____ Mines Company upon said property, or any part thereof, under the terms hereof during the period of said option shall be done in a minerlike and proper manner to enable said premises and all thereof to be carefully operated, and so that the minerals therein contained may be extracted in an economical and minerlike manner. All equipment, tools, machinery, structures, improvements and personal property of every nature and description brought or placed upon said premises prior to the exercise of said option by the _____ Mines Company for use in said work shall not become a fixture but shall remain the property of the _____ Mines Company and subject to removal by said _____ Mines Company, and in the event the said _____ Mines Company shall not exercise said option it shall be entitled to remove all of said equipment, tools, machinery, structures, improvements

and personal property from said premises within ninety days from the expiration of said option. And in further consideration for said option the-----Mines Company hereby agrees to enter upon said premises and undertake and carry out such investigation and exploration work to the cost of at least-----Dollars (\$-----).

3. All ores extracted by the-----Mines Company during the aforesaid time prior to the exercise of said option shall be and remain the property of the-----Company; provided, that the-----Mines Company is hereby given the right to take and have as its own for assay samples and mill tests from said mining claims, ore or ores to the amount of 20,000 pounds. In furtherance of the work contemplated in this and the preceding paragraphs, the-----Mines Company shall be entitled to use and enjoy any and all improvements, structures, machinery, tools, equipment or other personal property now situated upon said premises and properties belonging to the-----Company.

4. If at or before the expiration of said period of six months the-----Mines Company shall elect to exercise said above mentioned option and receive a mining lease to said premises as hereinabove provided, it shall so notify the-----Company and it shall upon such notice be entitled to receive in accordance with and subject to the terms of this contract a lease in the form of the lease attached hereto and by reference made a part hereof, and the-----Company hereby agrees upon such notice to make, execute and deliver such a lease to the-----Mines Company. In the event the-----Mines Company shall elect not to exercise said option, it shall peaceably surrender and turn over said properties to the-----Company in as good condition as they now are in, reasonable wear and tear excepted, and free and clear of any and all liens and incumbrances incurred by the-----Mines Company in its operations on and about the same. In the event that the-----Mines Company shall not elect to exercise said above mentioned option, the-----Mines Company agrees to deliver to the-----Company free and clear of expense, copies of all data, plans, analysis, photographs and other determinations and reports that the-----Mines Company shall have made or caused to be made or otherwise obtained in and about said premises during its possession of the same under said option.

5. The-----Company represents that it is the owner in fee of that certain patented lode mining claim known as and called the-----Mining Claim, hereinabove described, and that it has duly applied for patents or caused patents to be applied for from the United States government for all the other above described properties covered by this agreement and each of them, and covenants and agrees that it will proceed diligently to do all acts and things and make all payments to complete said applications and perfect its title to said properties and each of them; and represents and agrees that the properties covered by this agreement, including said patented-----Mining Claim, and each of them, are free from all liens and incumbrances of every nature and description, and during the period of said option the-----Company agrees to protect said properties from any and all liens and/or the possibility thereof, except such as may arise from the acts of the-----Mines Company upon said property,

and not to encumber said property or any part thereof; and the -----Company further agrees to furnish to the -----Mines Company satisfactory evidence of good title.

6. The -----Mines Company during its possession of said property and all thereof, agrees to protect said property and all thereof against all claims of labor and materialmen and against all liens and liabilities arising out of the acts of the -----Mines Company upon said property, and to permit the -----Company to place and maintain such notices thereon as shall be lawfully necessary to protect said -----Company against such claims; and the -----Mines Company further agrees to hold harmless the said -----Company against any and all claims for damages for injury incurred by workmen in its employ at said properties, or any other person or persons.

7. It is understood and agreed that during the possession of said property by the said -----Mines Company under said option, the -----Mines Company shall permit a duly authorized representative of the -----Company to be and remain upon the property hereby demised, to represent the -----Company and observe the performance by the -----Mines Company of each and all the terms of this agreement; provided that if said representative shall fail to work harmoniously with the Superintendent of the -----Mines Company, or should the presence of said representative become a source of trouble, then upon written request by the -----Mines Company to the -----Company, the -----Company shall see that such objectionable conduct shall cease or shall replace such representative with another so that the work may continue harmoniously and in the event that after such request such objectionable conduct on the part of such representative shall not cease, the -----Mines Company shall be entitled to remove such representative from the premises and the -----Company shall be entitled to appoint another representative to take the place of the representative so removed, as often as any particular representative shall become such source of trouble.

8. It is understood and agreed that during the possession of said property by the -----Mines Company under said option, the -----Mines Company shall pay to the -----Company the sum of -----Dollars (\$-----) per month.

9. It is understood and agreed that any time lost by reason of strikes, riots, acts of God or inevitable delays, is not to run against the time herein specified.

In witness whereof, the parties of the first and second parts hereto have respectively caused their respective corporate names to be hereunto subscribed and their respective corporate seals to be hereunto affixed by their respective officers thereunto duly authorized.

LEASE (ACCOMPANYING OPTION)

This agreement of lease, made and entered into this -----day of -----by and between the -----Mining Company, a corporation, duly organized and existing under and by virtue of the laws of -----, hereinafter called the Lessor, and the -----Mines

Company, a corporation duly organized and existing under and by virtue of the laws of said state, hereinafter called the Lessee,

WITNESSETH:

That the Lessor, for and in consideration of the rents, covenants, agreements, payments and royalties hereinafter reserved and by the Lessee agreed to be paid, kept and/or performed, has granted, let and demised, and by those presents does grant, let and demise unto the Lessee the following described mining properties situate in the----- Mining District, in the County of-----, State of-----, and more particularly described as follows, to wit:

(Description)

all of which said claims adjoin each other and said-----Claim and constitute but one parcel of mining ground and one property, and are commonly called the-----group of mines, and which claims were transferred, conveyed and assigned by-----Mining Company to the-----Company by a deed dated-----, and duly recorded on-----, in Vol.-----of deeds, at page-----in the office of the recorder of-----County, State of-----; also that certain unpatented mill site known as and called the-----Mill Site.

TO HAVE AND TO HOLD said premises for the purpose of searching for, mining, extracting, milling, reducing, treating and preparing ores, metals and minerals of every nature and description, and with the exclusive right to possess and work the same for said purposes, for the term of----- (----) years from the date hereof unless sooner terminated as hereinafter provided.

In consideration of said lease the said Lessee does hereby covenant and agree with the Lessor as follows:

1. The Lessee agrees to enter upon said premises and to proceed at once to erect and fully equip and thereafter maintain upon said premises a not less than-----ton mill, together with such appurtenances as may be requisite or proper for the reduction and treatment of ore or ores of the character produced from said properties. The requisite power or use in and about such mill, and its appurtenances shall be furnished by the Lessee, and said Lessee further agrees to enlarge the present working shaft in the so-called-----Claim down to the-----foot level and do such other work needful to place said properties upon a production basis.

2. The Lessee agrees to work said properties in a miner-like fashion and in a manner necessary and proper to good and economical mining and so as to take out the greatest amount of ore possible, with due regard to the safety, development and preservation of the same as a workable mine or mines, and to mill the ores so extracted in a manner necessary and proper to the economical and expeditious reduction and/or treatment thereof.

3. The Lessee agrees to work and mine said premises as aforesaid and to mill the ores so extracted steadily and continuously during the continuance of this lease; and an abandonment by said Lessee of the work upon said premises for a period of thirty consecutive days, unless due to strikes, riots, acts of God or unavoidable interruption, may be

considered by the Lessor a violation of this lease and cause for forfeiture of the same, as hereinafter provided in paragraph 21 hereof.

4. The Lessee agrees to permit Lessor or its duly authorized agent or representative at any and all times (a) to enter upon and visit all parts of said leased premises and the mill and its appurtenances erected and maintained thereon for the purpose of taking assay samples and of observing whether the terms of this lease are being fully and faithfully complied with by the Lessee; (b) to take samples from any ores awaiting milling, reduction or treatment; and (c) to have surveys made of the workings whether under or above ground, or both, and the Lessee further agrees to furnish Lessor as and when requested by said Lessor, a copy of blueprints of all surveys or maps made by the Lessee, and generally to facilitate in every way such inspection, surveys and samplings, as above provided, and to furnish to the Lessor or its duly authorized agent, when requested, full, true and accurate information not theretofore furnished with regard to the condition of said workings or any part thereof or the quality or character of the minerals therein.

5. In the event said properties or any of them shall be placed upon production by the Lessee, the Lessee shall retain out of the net proceeds of each cleanup prior to the distribution of said net proceeds as hereinafter in paragraphs 6, 7 and 8 provided, and shall set apart as a sinking fund to meet the cost of further exploration and/or development of said premises and/or of the improvements, increase or expansion of the equipment, facilities or improvements used in the operation of the same, a sum equal to----per ton for each and every ton of ore, constituting and being the tonnage from which each cleanup is based, until such sinking fund shall equal a maximum of-----Dollars (\$-----). The Lessee may from time to time use all or any portion of said sinking fund in its own discretion, for such work and/or improvement, increase or expansion of facilities or equipment, and shall not be required to wait until the amount in said sinking fund shall equal any specified sum before drawing upon said fund for said purposes or any of them; but the amounts so drawn from said fund shall thereafter be replaced in the same manner in which said fund was originally created as in this paragraph provided; and further payments shall continue to be so made into said fund until there is a total of \$-----therein. But said fund shall in no event exceed \$-----except by agreement of the parties and shall be maintained and continued until it shall become apparent that any further exploration and/or development work would be useless or unjustifiable, in which event the amount at such time remaining in said fund shall be divided between the Lessor and the Lessee in the following proportions:

(a) In the event that at such time the Lessee shall not have been fully reimbursed as in paragraph 6 hereof hereinafter provided, the Lessee shall receive all or such portion of the amount in said sinking fund as shall be necessary to fully reimburse the Lessee as in said paragraph provided, and the balance of said fund, if any, shall be divided between the Lessor and the Lessee in the proportion of-----per cent to the Lessor and-----per cent to the Lessee.

(b) In the event that at the time of the distribution of said fund the Lessee shall have been fully reimbursed as in said paragraph 6 hereinbelow provided, but the Lessor shall not have received the full

amount to which the Lessor shall be entitled under paragraph 7 hereinafter, the amount remaining in said sinking fund shall be divided in the proportion of-----per cent, to the Lessor and-----per cent to the Lessee would result in the Lessor receiving a larger total amount than the Lessor would be entitled to under said paragraph 7, the balance remaining over and above the amount needful to pay off the Lessor under said paragraph 7 shall be divided between the Lessor and the Lessee in the proportion of-----per cent to the Lessee and-----per cent to the Lessor.

(c) In the event that at the time of such distribution of the amount so remaining in said sinking fund the Lessee and Lessor shall both have been fully paid off under paragraphs 6 and 7 hereof, said amount shall be distributed in the proportion of-----per cent to the Lessee and-----per cent to the Lessor.

In the event that the Lessor and the Lessee shall be unable to agree as to whether further exploration and/or development work would be useless or unjustifiable so as to require the distribution of said sinking fund as hereinabove in this paragraph provided, the question shall be submitted to two first-class mining engineers or geologists occupying substantially the same standing in the profession now held by Messrs. -----and-----, one to be selected by the Lessee and one to be selected by the Lessor, whose joint decision in said matter shall be final, and in the event that the two so selected can not or do not agree they shall appoint a third arbitrator of substantially the same professional standing whose decision in said matter shall be final, and the compensation of such arbitrators shall be treated as an operating expense of said property to be deducted along with the other expenditures hereinafter required to be deducted from the proceeds in order to compute the "Net proceeds" as the term is herein used.

6. In the event said property shall be placed upon production by the Lessee, then after deducting from the net proceeds of the sale of such production as hereinafter defined, the amounts hereinabove required to be set aside for a sinking fund, the Lessee shall be entitled to retain the entire balance of said net proceeds until it shall have reimbursed itself in full for the cost of doing the equipment and development work hereinabove mentioned in paragraph 1 and placing the properties upon production in the manner mentioned in said paragraph. Said cost shall include:

(a) All labor costs of doing all and every part of said work, erecting said mill, installing said equipment, providing said power and making said improvements and development and placing said property on production:

(b) The cost of dismantling the Lessee's present mill at-----, and preparing the same for transportation to the leased premises, together with the cost of preparing for such transportation all other equipment of the Lessee now at-----and desired by the Lessee to be removed to the demised premises for the purpose of carrying out its obligations under said paragraph 1.

(c) The drafting of the plans and the architectural, surveying and engineering work required for the location and equipment of the new mill upon said premises;

(d) All transportation cost of materials, equipment, supplies, machinery, tools and facilities to the demised premises for use in the work described in said paragraph 1.

(e) The cost of superintendence and inspection and of engineering, geological and other expert advice, if any;

(f) The value of improvements, machinery, equipment, tools, buildings, structures, facilities, materials and other personal property of every nature and description moved, placed and/or set up on said property by or for the Lessee for the purpose of carrying out its obligations and doing all the work hereinabove mentioned in said paragraph 1 and placing said property on production;

(g) A charge for overhead expenses not to exceed \$----- per month during the period of such development and equipment work prior to the placing of said properties upon production;

(h) Any damages incurred in the course of said work and not covered by insurance.

(i) Any other amounts which can properly be charged as costs pertaining to the performance of the work covered by said paragraph 1.

The value of said improvements, machinery, equipment, tools, buildings, structures, facilities, materials and personal property of every description so moved or placed on the demised premises and hereinabove referred to in subdivision (f) shall be in the case of such property as shall be specially purchased for such work or installation, the cost of the same on the ground to the Lessee; while in case of such property as shall have been previously owned by the Lessee, its value shall be appraised within thirty days of installation by-----, superintendent of the Lessee, and by-----, agent of the Lessor and said-----and-----shall also determine the cost of transportation where such transportation is actually performed by the Lessee in its own vehicle and with its own labor; and in the event said-----and-----shall be unable to agree in their valuation they shall unite in selecting an arbitrator whose valuation shall be final upon the costs which the said-----and-----are hereby authorized to determine.

7. After the Lessee shall have been so reimbursed in full as in paragraph 6 hereinabove provided out of the net proceeds remaining after setting aside the amounts hereinabove required to be set aside for a sinking fund, thereafter the Lessee shall pay to the Lessor----- per cent of such net proceeds remaining after so setting aside the amounts required to be paid into said sinking fund, until such payments to the Lessor shall equal the total amount previously retained by the Lessee for its reimbursement under paragraph 6 hereof. While such payments are being made to the Lessor the remaining----- per cent of such net proceeds, after sinking fund payments, shall be retained by and belong to and be the absolute property of the Lessee. This percentage of distribution shall be effective until the Lessor shall have received a sum of money equal to the sum that the Lessee shall have received by way of reimbursement as in said paragraph 6 hereinabove provided.

8. After the Lessor shall have received the total sum provided to be paid the Lessor under paragraph 7 hereof, thereafter the Lessee shall pay to the Lessor as further rental for said property, ----- per cent

of the net proceeds resulting from the operation of the property after the deduction from such net proceeds of the amounts hereinabove required to be set aside in the sinking fund; and the Lessee shall retain and be the absolute owner of the remaining ----- per cent.

9. In determining the net proceeds as the term is used in this lease, there shall be deducted from the amounts received by the Lessee from the sale of the products of said property as shown by the mint returns of the proceeds from said mining claims or any of them.

(a) Postal, freight or express costs of transporting said products to the mint, including insurance costs in transit and other selling charges, if any;

(b) The actual cost of maintaining and operating said premises and keeping the same on production and producing the products thereof, including the cost of property insurance, workmen's compensation insurance, in addition to and/or including any and all insurance which is or may be required by law, or for the protection of either or both of the parties hereto;

(c) An overhead charge not to exceed \$----- per month;

(d) Sums sufficient to meet all taxes, levies, rates, assessments, fees or other governmental charges upon said premises or the mineral rights therein or the mineral content or product thereof or the personal property thereon used or useful in the operation or development of the same, or which may be or become a lien thereon or be levied upon or in connection with the operation thereof;

(e) Amounts paid as damages resulting in the course of operations on said premises not covered by insurance;

(f) The cost of geological, engineering and/or other technical advice which may be required for the proper operation of the demised premises;

(g) The cost of repairing or restoring any equipment, improvements or other property destroyed or damaged by accident, the elements or the act of God, where not covered by insurance;

(h) Any other amounts which can properly be charged as costs pertaining to operation of the properties and production from the same.

10. In the event that the amount at any time in the sinking fund shall be insufficient to defray the cost of improving, enlarging or increasing the equipment, facilities and/or improvements used in operating the premises hereby demised, the cost of defraying the balance of such expenses which can not be paid out of said sinking fund shall become a charge upon the net proceeds from the property remaining after setting aside the amounts hereinabove required to be set aside for a sinking fund, and the distribution of the amount so remaining from said net proceeds as hereinabove provided in paragraphs 6, 7 and 8 hereof shall not proceed until said cost shall have been so repaid therefrom; provided that no such cost shall be incurred except in the development of the property in a manner mutually beneficial to the interests therein of both Lessor and Lessee.

11. Lessee shall keep proper books of account showing all disbursements of every kind and character made in connection with its development and/or operation of said premises, or any part thereof, and said books of account shall at all proper business hours be open to the examination of the Lessor or its duly authorized agent, and the Lessor

is hereby given full and free right to make a copy of said books of account or any portion thereof.

12. In the event that said properties or any of them shall be placed on production, the Lessee agrees to render to the Lessor on or before the ----- day of each month a written statement showing the number of shifts worked, the amount of ore milled reduced and/or treated, the amount of wages and salary paid to the employees of said Lessee engaged in and about said premises in the mining, milling, reduction and/or treatment of said ore, the cost of supplies and all other expenses of operating the demised premises incurred during the next preceding calendar month, and to afford the Lessor or its duly authorized representative every facility for the inspection and copying of all books, assay journals, assay certificates, accounts, pay rolls and vouchers of said Lessee relating to indebtedness or liabilities incurred or claimed for work, services or materials in respect of the operation of said premises and the milling, reduction and/or treatment of ore therefrom.

13. Lessee agrees to keep said premises and every part thereof at all times free and clear of all mechanic's, miners' and/or other labor liens and incumbrances of every other nature and description, and to pay all indebtedness and liabilities incurred by the Lessee which may or might become a lien on said premises before said indebtedness and/or liabilities shall become such lien, and to post and at all times keep posted in some conspicuous place upon the demised premises a notice that the interest of the Lessor therein shall not be subject to any lien for service, labor or material furnished upon or used in connection with this lease or said leased premises by the Lessee, said notice to be on behalf of and in the name of the Lessor.

14. All sums hereinabove required to be paid by the Lessee to the Lessor from the net proceeds of the products of said property shall be paid by the Lessee to the Lessor to the ---- day of each calendar month succeeding the calendar month in which the cleanup shall be made from which such proceeds shall accrue, and the Lessee at such time shall and will furnish to the Lessor a true account of all ores extracted and milled and all bullion received therefrom after the last cleanup for which such an accounting was previously made.

15. Lessee agrees to protect the property hereby demised during the term of this lease against trespassers or other wrongful intruders thereon.

16. Lessee agrees to assume all responsibility for and to save Lessor harmless from any and all accidents to itself or any of its employees, sub-lessees, licensees, agents, associates or visitors upon the demised premises and to post and at all times keep posted at the main working upon the premises hereby leased, a conspicuous notice in the name of and on behalf of the Lessor, stating in substance that the Lessor will not be liable for damages on account of any such accident or accidents.

17. Lessee agrees that all its operations under this lease shall be conducted so as to fully comply in every respect with the laws of the state of ----- .

18. Lessee hereby agrees to provide workmen's compensation insurance at once upon commencement of operations so as to protect the interest of the Lessor in the demised premises from the lien of any

judgment obtained in any action brought by reason of the injury to any workmen in and about the operations of the Lessee upon said premises and that such insurance shall be carried with a responsible insurance-carrier.

19. In the event that any action at law by the Lessor against the Lessee in or about any matter connected with this lease, the Lessor shall recover judgment, the Lessee hereby agrees to pay to the Lessor the costs thereof and a reasonable attorney's fee to be fixed in said action, which costs and fee shall become a lien upon said property, but in the event of such action the Lessee shall recover judgment, the Lessor agrees to pay to the Lessee the costs and a reasonable attorney's fee.

20. Lessor represents, covenants and agrees with the Lessee that the properties covered by this lease and each of them, are free from all liens and adverse claims of every kind and character, and the Lessor will warrant and defend the said premises to the said Lessee against all claims and demands of all persons; provided, that if the possession and enjoyment of the said demised premises by the Lessee shall be interfered with as a result of any legal proceedings brought by a party other than the Lessor and Lessee shall thereafter be restored to possession by the judgment of the court in any such proceedings, the costs to the Lessee in such proceedings and any loss resulting in the operation or development of said premises by reason of such disturbed and interrupted possession and enjoyment shall be borne by the Lessor and the Lessee in the proportion of----per cent by the Lessee and----per cent by the Lessor.

21. In the event of the termination of this lease, for any cause whatsoever, then and in that event, the Lessee shall and will peaceably surrender and yield up the said premises and every part and portion thereof to the Lessor, free and clear of any and all liens and/or encumbrances; or in the event that the mineral deposits included in the premises covered by this lease, shall at any time become exhausted so that it will not longer be commercially practical to operate the same, the Lessee shall have and is hereby given the right or privilege to discontinue operations upon said property and abandon the same.

In the event of any dispute between the Lessor and the Lessee as to such exhaustion, the question shall be submitted to two first-class mining engineers or geologists, occupying substantially the same professional standing as Messrs.----- and ----- now occupy, one to be selected by the Lessee and one to be selected by the Lessor, and in that event that the two so selected can not or do not agree, they shall appoint a third arbitrator of substantially the same professional standing, whose decision in said matter shall be and become final.

Upon such determination of this lease or the discontinuance of its operations or the abandonment of the premises by the said Lessee, the personal property, tools, equipment and machinery located upon the said property at the time of such termination, discontinuance and/or abandonment, shall belong to and be and become the property of the Lessor and the Lessee in the proportion of-----per cent to the Lessee and----per cent to the Lessor; provided the Lessee shall at such time have been repaid in full as in paragraph 6 hereof.

22. Time is of the essence of this lease. In the event of failure by the Lessee to perform any of the covenants or comply with any of the conditions in this lease provided to be performed and/or kept by the Lessee, the Lessor shall be entitled to give written notice of such default to the Lessee and in the event the Lessee shall not proceed with reasonable diligence to remedy such default within---- (--) days after receipt of such notice the Lessor at its option shall be entitled to terminate this lease and declare the same forfeited.

23. It is further understood and agreed that any time lost by reason of strikes, riots, acts of God or unavoidable delays is not to run against the time herein specified.

24. This agreement shall be binding upon and run in favor of the successors and assigns of each of the parties hereto, except as herein specifically provided. Provided that neither this lease nor any interest of the Lessee therein or thereunder shall be transferred or granted, whether in the form of a sub-lease or otherwise during the term hereof, without the consent in writing of the Lessor or its duly authorized agent first thereto had and obtained.

25. It is understood and agreed that until such time as the Lessor shall have received payment in full of the amount hereinabove provided to be paid to the Lessor in paragraph 7 hereof, to equal the reimbursement of the Lessee provided in paragraph 6 hereof, the Lessee shall permit a duly authorized representative of the Lessor to be and remain upon the property hereby demised, to represent the Lessor and observe the performance by the Lessee of each and all the terms of this agreement; provided, that if said representative shall fail to work harmoniously with the superintendent of the Lessee, or should the presence of said representative become a source of trouble, then upon written request by the Lessee to the Lessor, Lessor shall see that such objectionable conduct shall cease or shall replace such representative with another so that the work may continue harmoniously and in the event that after such objectionable conduct on the part of such representative shall not cease, Lessee shall be entitled to remove such representative from the premises and Lessor shall be entitled to appoint another representative to take the place of the representative so removed, as often as any particular representative shall become such source of trouble.

26. It is understood and agreed that until such time as the Lessor shall have received payment in full of the amount hereinabove provided to be paid to the Lessor in paragraph 7 hereof to equal the reimbursement of the Lessee provided in paragraph 6 hereof, the Lessee shall pay to the Lessor the sum of \$----- per month.

In witness whereof, the parties hereto have caused their respective corporate names and seals to be hereunto affixed by their respective Presidents and Secretaries, thereunto authorized by resolution by their respective Boards of Directors, the day and year first hereinabove written.

FORM No. 14

RATIFICATION BY STOCKHOLDERS

Know all men by these presents, That we, the undersigned, ----- stockholders of ----- Mining Company, a corporation organized and existing under and by virtue of the laws of the State of -----, and having a capital stock of ----- dollars, divided into ----- shares of the par value of ----- dollars each, and severally the owners and holders of record on the books of said corporation of the number of shares of the capital stock of said corporation set opposite our respective signatures, and together owning and holding more than ----- shares of the issued and outstanding capital stock of said corporation, being fully advised in the premises, hereby agree, consent to, approve of, ratify and confirm the foregoing option and lease.

In witness whereof, we have hereunto set our hands this ----- day of ----- 19-----.

Name of Stockholder.

No. of Shares.

Certificate of Secretary

I, -----, do hereby certify that I am the duly appointed and acting secretary of ----- Mining Company, a corporation organized and existing under and by virtue of the laws of the State of -----.

That the capital stock of said corporation is ----- dollars, divided into ----- shares of the par value of ----- dollars each.

That ----- shares of said capital stock of said corporation have been issued and are now outstanding. That the persons signing the above and foregoing ratification at the time their respective signatures were affixed thereto were stockholders of said corporation, holding of record at least ----- of the entire issued and outstanding shares of the capital stock of said corporation, and were at such time the owners and holders of the number of shares set opposite their respective names.

Witness my hand and the corporate seal of said corporation by me hereto affixed this ----- day of -----, 19-----.

FORM No. 15

SHORT FORM OF OPTION

In consideration of the sum of ----- dollars, to me in hand paid, I, the undersigned, will sell to -----, my certain mining claim known as ----- situate in ----- Mining District, County of ----- and State of -----, for the sum of ----- dollars, at any time within ----- months from date, payable as follows, to wit: -----.

Upon full payment made I will convey said mining claim to said optionee by a good and sufficient deed.

The right of entry and exclusive possession of said premises is hereby given to said optionee together with the right to extract ore therefrom, but with no right thereto or removal thereof, unless and until this option be consummated according to its terms.

All work done upon said mining claim by said optionee shall be done in a minerlike manner and at the sole cost and expense of the

optionee. Actual work upon said premises to commence on----- and to proceed with reasonable diligence unless prevented by strikes, the elements, unavoidable accidents or other causes beyond the control of the optionee.

The optionee shall keep said premises free and clear of all costs, liens and encumbrances done, made or suffered by him.

The optionee shall and will quietly and peacefully quit and surrender said premises and any ore extracted by him therefrom upon the termination of this option from any legal cause.

Upon the failure to make any payments herein provided for upon said purchase price of said premises at the time herein specified for the same to be made the right of the optionee shall immediately cease and determine and the payments theretofore made by him shall immediately become the property of the optioner, and the optionee hereby waives all claim thereto.

All machinery and improvements placed upon said premises by the optionee may be removed by him within-----days after the termination of this option.

Witness my hand this-----day of-----.

FORM No. 16

ASSIGNMENT OF LEASE AND OPTION

(Precedent in Pollard v. Sayre, 45 Colo. 195, 98 Pac. 816)

For and in consideration of the sum of-----dollars, to me in hand paid, by-----, the receipt whereof is hereby acknowledged, and the further sum of-----dollars, to be paid to me, my executors, administrators, or assigns, within-----months from the date hereof, I hereby sell, assign, transfer and convey to said -----the within bond and lease and all my right, title, and interest therein and all my right, title and interest in and to the real estate therein described. The deferred payment to be deposited in the -----bank, to the credit of-----.

It is hereby agreed that no personal liability shall attach to said -----for said deferred payment, and that it shall be optional with him whether he shall make the same; but if not paid then all rights acquired by said-----by virtue hereof in and to the within bond and lease and in and to the real estate therein described, shall become forfeited and all payments theretofore made by said-----shall be likewise forfeited to me and the above assignment and conveyance become null and void.

In witness whereof, I have hereunto set my hand and seal this -----day of-----, 19-----.

FORM No. 17

LEASE (COLORADO FORM)

This agreement of lease made and entered into this-----day of ----- in the year of our Lord one thousand nine hundred and -----, by and between The ----- Company, a -----

corporation, (hereinafter termed "the Lessor") party of the first part, and -----, (hereinafter termed "the Lessee"), party of the second part.

Witnesseth, That the said Lessor, for and in consideration of the rents, covenants, agreements, payments and royalties hereinafter reserved and by the said Lessee to be paid, kept and performed, has granted, let and demised, and by these presents does grant, let and demise unto said Lessee the following described mining property, situate in the ----- Mining District, ----- County, -----, to-wit: All of ----- and ----- lode mining claims belonging to the ----- Company situate on -----, except that part lying below the level of the ----- Tunnel.

The rights hereby granted are limited to within the vertical planes of the boundary lines of the above described premises, all extra-lateral rights, if any, being reserved to the Lessor, and Lessee shall have no right to extend his workings beyond such vertical planes.

There are expressly excluded from the above described premises any portions thereof which have been or may be deeded, relinquished or lost to the Lessor in settlement of conflicts or otherwise.

The rights herein granted to the premises hereby leased are limited to that part lying above the level of the ----- Tunnel.

The Lessor herein reserves the right to all dumps now located or which may hereafter be placed upon the premises hereby leased, together with the right, for itself or any parties acting through or under it, to enter upon any and all portions of said premises to sort, screen, wash, sell or remove from said premises any portion or all of any dumps which may be located thereon.

To have and to hold the said demised premises for the purpose of mining, and for no other purpose, for the term of ----- years from the date hereof, to expire at noon on the ----- day of ----- A. D. 19----, unless sooner forfeited or determined through violation of any agreement, covenant or condition hereinafter contained, to be kept and performed by the said Lessee.

In consideration of said lease, the said Lessee does hereby covenant and agree severally and jointly with the said Lessor as follows:

1. To enter upon said premises, and to commence work thereon within ----- days from the date of this lease, and to work the same mine-fashion in manner necessary and appropriate to good and economical mining, so as to take out the greatest amount of ore possible with due regard to the safety, development and preservation of the same as a workable mine; all work, timbering, construction and installation of improvements to be subject to the inspection and approval of the general manager, superintendent or other representative of the Lessor.

2. To work and mine the said premises as aforesaid steadily and continuously during the term of this lease, with not less than ----- shifts of underground work during each and every calendar month of the term of this lease, except as stated in Paragraph 6a. No excess above the required number of shifts in any one month to apply on any other month, and a failure on the part of the said Lessee to work said premises with at least said number of shifts each calendar month, or failure to work said premises at all for ten consecutive days, may be

considered by the Lessor a violation of this lease, and shall, at the option of the Lessor, and without demand or notice, work a forfeiture of this lease. The word "shift" is taken and accepted to mean the labor of one man for one day of at least eight hours.

3. To well and sufficiently timber with strong, well fitted and durable timbers, all the workings on the premises hereby leased at all points where proper, in accordance with good mining, and for ventilation, and to promptly repair or replace all timbering which may be rendered insufficient by any cause whatsoever: to keep the timbering of said workings at all times in good, safe and serviceable condition, and to remove no timbering, pipe, rails, track, etc., from any portion of said premises without the written consent of the Lessor, its Manager or any duly authorized agent.

4. To keep at all times all drifts, tunnels, shafts, winzes and other workings in said premises thoroughly drained and clear of loose rock and rubbish, and in an absolutely safe and secure condition, unless prevented by extraordinary mining casualty, and to maintain at all times and leave the floors of all drifts, crosscuts and other workings in good, even, unobstructed condition, and to stow no waste underground, nor fill any stopes, without the written consent of the Lessor, its Manager or any duly authorized agent.

5. To do no underhand stoping, whether for the purpose of prospecting or taking out of ore, or for any other purpose whatsoever. To do no stoping or mining within twenty feet of any shaft or incline except with the written consent and under the direction of the Lessor, its Manager or any duly authorized agent. To run all drifts and levels upon the grade designated by the Lessor, its Manager or other authorized agent.

6. To make and keep all shafts, excepting as hereinafter provided, not less than ----- feet long by ----- feet wide in the clear of timbers throughout their entire depths, keeping them vertical and plumb throughout their entire depths, and timbered throughout their entire depths, either with square sets, closely lagged, or with cribbing which shall be at least ---- by ---- inches in size; to keep all ascents and descents in the workings fully equipped at all times with substantial ladders and partitions throughout their entire depths; to make and keep all tunnels, drifts, crosscuts, raises and winzes not less than ---- by ---- feet in the clear of all timbers and to comply with all of the requirements of the laws of the State of -----.

6a. It is understood and agreed that during the first six months of this lease ----- shifts per month only will be required, ----- shifts per month underground during the second six months and ----- shifts per month underground during the second and third years and ---- shifts per month during the fourth and fifth years.

7. It is understood and agreed that beginning with the third year one hundred feet of sinking is to be done each year, said sinking to be completed before the ---- day of ---- of each year. Other development satisfactory to the parties hereto may be substituted for the above mentioned sinking. It is understood and agreed the Lessee be permitted to sublease any portion of the premises he may desire and that the work done by the sublessees may apply on the required number of shifts up to one-half the necessary amount, providing the said sublessee work

consists of drifting, crosseutting, raising or winzing satisfactory to both parties.

7a. It is understood and agreed that Lessee will carry insurance on the ---- plant and buildings to the amount of \$---- being the amount at present in force.

8. To cause or permit no timber standing on the premises hereby leased to be cut or injured in any way or for any purpose; to cause or permit no buildings or structures of any kind to be erected or to remain upon said premises, except such as are necessary for the actual working of the mine, or for hoisting, sorting or shipping of ores extracted therefrom except and in so far as authorized in writing by the Lessor, its manager or any duly authorized agent; and to keep all buildings, machinery and improvements upon the leased premises in repair and at the expiration, cancellation or forfeiture of this lease, to return same in as good condition as they are at the present time, ordinary wear and tear alone excepted.

9. To allow the Lessor, its manager or any duly authorized agent or representative at any and all times; (a) to enter and visit all parts of said leased premises and the workings thereon for the purpose of inspection and taking of assay samples; (b) to take samples from any ores awaiting shipment; (c) to have surveys made of the workings by the Lessor's surveyor and assistants whether under or above ground, or both, as often as the Lessor, its manager or any duly authorized agent shall so order, and also furnish to Lessor copies of blueprints of all surveys or maps made by the Lessee; and generally to facilitate in every way such inspection, surveys and sampling, as above provided.

10. There is expressly reserved to the Lessor rights of way through the premises hereby leased for the more convenient working or examination of adjacent ground, but such rights-of-way shall be so exercised as not to interfere, more than is necessary, with the operations of the Lessee therein and there is also expressly reserved to the Lessor the right and privilege to do any and all development work upon the premises hereby leased which may be rendered desirable by reason of any litigation or controversy which may arise and which may affect said leased premises or other adjacent property in which the Lessor is interested, and to use the workings of the Lessee herein in prosecuting such development work, providing that the same shall not interfere more than is necessary with the mining operations of the Lessee and that all ore mined in the prosecution of such development work shall belong to the Lessee herein (in so far as the same shall be taken from ground hereby leased) subject to the royalty hereinafter provided.

11. The Lessee agrees to render to the Lessor, on or before the ---- day of each month, a written statement showing the number of shifts worked, the wages therefor, amount of salaries, value of supplies and all other expenses of operating this lease incurred during the preceding month, and to afford the Lessor, its manager or any duly authorized agent, every facility, at all times, for the inspection and copying of all books, assay journals, assay certificates, accounts, pay-rolls, vouchers, correspondence and papers generally of said Lessee in so far only as they may relate to indebtedness or liabilities incurred or claimed for work, services or materials in respect of said premises, or the development of other workings thereon, or shipment of ore therefrom.

12. To keep said premises and every part thereof at all times free and clear of all mechanics' or miners' liens or other liens, encumbrances or liabilities; to settle, pay and discharge on or before the ---- day of each calendar month, all indebtedness and liabilities incurred by the said Lessee prior to the expiration of the preceding calendar month for work done, services rendered or material furnished in respect of said premises, and to forthwith post, and at all times keep posted in some conspicuous place upon the premises hereby leased a notice that said premises are leased to the Lessee and that the interest of the Lessor therein shall not be subject to any lien for services, labor or material furnished upon or used in connection with this lease, or said leased premises, said notice to be on behalf and in the name of the Lessor Company with the signature of the Lessee also attached.

13. To furnish to the Lessor, its manager or any duly authorized agent, full, true and accurate information with regard to the condition of said workings or any part thereof or the quality or character of the mineral therein, and to immediately give the Lessor notice of any discovery of any mineral.

14. To allow no persons not in privity with the parties hereto to take or hold possession of said premises or any part thereof under any claim or pretense whatsoever.

15. To assume all responsibility for and save the Lessor harmless from any and all accidents to himself or any of his employees, sublessees, licensees, agents, associates or visitors, upon the property of the Lessor, as herein leased and to forthwith post and at all times keep posted at the main working upon the premises hereby leased, a conspicuous notice in the name and on behalf of the Lessor, with the name of the Lessee also attached stating in substance that the premises are leased to the Lessee and that the Lessor will not be liable for damages on account of any such accident. The Lessor shall under no circumstances be liable to the Lessee or his agents, servants, employees, licensees, sublessees, associates, visitors or any other person, on account of any such accident.

16. To ship all ore with reasonable diligence after mining, with the right reserved to the Lessor to take and remove all ores not so shipped with reasonable diligence and to apply the proceeds under the directions of this lease; to notify the Lessor, its manager or any duly authorized agent, whenever ore is ready for shipment, giving the estimated tonnage and value thereof, also the intended purchaser, but it is expressly understood and agreed that all ore extracted from said leased premises shall be shipped in the name of the Lessor and Lessee and shall be routed and sent to and treated at the mill, smelter, sampler, or reduction works satisfactory to both parties.

17. It is expressly understood and agreed that the Lessor reserves the property and right of property in and to all ores extracted or to be extracted from said premises and in and to all ores not shipped within ten days after the expiration or other termination of this lease; that all ores which are of too low grade for profitable shipment shall remain on the premises, subject to the sole control and disposition of the Lessor, and that any loss or expense resulting from or incident to any shipment of such low grade ore shall be borne and paid by the Lessee; that all low grade ore not shipped shall be kept separate from and not mixed with waste, so that it may be available for shipment at any time by

the Lessor, and said low grade ore shall be deposited as directed by the Lessor, its manager or any duly authorized agent.

18. Said Lessee furthermore agrees that if he shall discover, in working said premises, any side veins, cross veins, spurs or feeders he shall at once notify the Lessor and said side veins, cross veins, spurs or feeders shall be and remain the property of the Lessor, but the same shall be included in this lease.

19. To pay and deliver, or cause to be paid and delivered to said Lessor, as a rental or royalty upon all ores extracted and shipped or sold from said premises, the following royalty, the rate of which is to be determined in each case by the gross value of the ore, without deduction for transportation and treatment, but the amount of royalty at the rate so determined to be computed upon the net value (the net value of said ores to be deemed in each case to be their value, less transportation and treatment charges with deduction for hauling, switching or sampling) to wit: ---- per cent on all ores up to and including \$---- per ton; ---- per cent (--) on all ores from \$---- and including \$---- per ton; ---- per cent (--) on all ores from \$---- and including \$---- per ton; ---- per cent (--) on all ores over \$---- per ton.

The Lessee further covenants and agrees to pay his pro rata of all taxes assessed against the leased premises according to the value of ore mined and shipped therefrom under the terms of this lease and it is hereby mutually agreed that the Lessor shall, in lieu of the Lessee's proportion of said taxes, retain from all shipments ---- per cent of the gross value thereof after deducting transportation and treatment charges. To cause said royalty to be left at the mill, smelter, sampler or reduction works purchasing said ore, payable to the order of the Lessor, on duplicate returns thereof. The Lessor shall not be liable for the proceeds of ore lost through theft or by any accident or failure of the ore buyer.

20. The Lessor reserves the right at all times to keep its manager or any duly authorized agent at said leased premises, in whose presence all ore shall be classed, graded, sorted and shipped and said manager or agent shall be permitted to take samples from all ores mined or sorted for examination or assay. In case any dispute shall arise between the Lessor and the Lessee or between the agents of the parties hereto, in regard to the classing, sorting, grading or shipping of any of said ores, then in that case all shipments of said ore in question shall cease until the controversy is settled by arbitration, as hereinafter provided, to wit: The Lessor and Lessee shall each choose one representative and the two so chosen shall choose a third, and the three so chosen shall pass upon said difficulty, and their decision shall be final; and the cost of arbitration, as above provided, is to be borne by the parties hereto in proportion to the division of returns received for the ore in dispute, and said cost may be deducted from said cash returns before division.

21. It is furthermore agreed and understood between the parties hereto, that the Lessee herein shall not cause this lease nor any sublease or assignment thereof to be recorded in any public records.

22. This lease is personal to the said Lessee and neither said lease nor any interest of said Lessee therein or thereunder shall be assigned, transferred or granted (whether in the form of a sublease or otherwise, during the term hereof, without the consent in writing of the Lessor, its

manager or any duly authorized agent first thereto had and obtained; and in any event no work done by sublessees shall be included in the computation of the work required to be done by the Lessee except as designated in article 7.

23. It is expressly covenanted and agreed between the parties hereto that, should any legal proceedings be instituted, such as injunction, apex suits or any other proceedings whatsoever, which would interfere with the possession and enjoyment of the said demised premises, that the Lessee shall under no circumstances attempt to hold the Lessor liable in damages or otherwise to the Lessee therefor on account of such disturbed and interrupted possession and enjoyment.

24. It is furthermore agreed and understood that the Lessor reserves the right of property to all dumps located upon the said demised premises.

25. The said Lessee does hereby furthermore agree that he will employ no man upon or in working the premises herein leased, who is not satisfactory to the Lessor and that, upon the first day of each month the said Lessee will furnish the Lessor a complete list of all employees working in, upon or about said premises, and that he will promptly discharge any person or persons upon notification from the Lessor that such persons or person are not satisfactory to the said Lessor.

26. It is understood and agreed that the Lessee be permitted to assign this lease to his associates either in the form of a partnership or corporation to be formed, otherwise Article 22 will govern. Lessee will be allowed to work other properties through the----- working preference being given to ----- work. In case of shortage of dump room, arrangements to be made by Lessee for additional room or other than ----- work.

27. Said Lessee does hereby furthermore covenant and agree that in case he fails to commence work on said premises as aforesaid, or to work and mine the same continuously, with diligence and in a workmanlike manner, or to keep the same securely timbered, drained, clear and in safe condition, or to allow inspection, sampling or survey thereof, or to furnish true information regarding the same according to the conditions herein, or to render monthly statements as provided for herein; or to keep the same free from liens, or to keep notices posted upon the leased premises in manner provided herein, or to make monthly settlement for work, services and materials or to duly notify the Lessor when ore is ready for shipment, or to pay loss in shipping undergrade ore, all as above provided, or shall do any underhand stoping, or assign or sublet any interest in this lease or said premises without written consent of Lessor, or shall record or allow this lease to be recorded or any sublease or assignment thereof, or shall in these or any other respects fail to keep and fulfill any and all conditions, covenants or agreements herein expressed or implied, then and in that case the term of this lease shall at the option of the Lessor, expire, and it shall be lawful for the Lessor, its manager, attorney or other duly authorized agent, to declare this lease void and of no effect thereafter, and with or without process of law and without notice to the Lessee to enter upon and take possession of said premises, and dispossess all persons occupying the same; and in such case, and also at the expiration of this lease

by limitation, to wit, at noon of the last day of the term hereby granted as aforesaid, said Lessee hereby agrees to surrender, yield and deliver to the Lessor its successors or assigns, quiet and peaceable possession and enjoyment of said premises and all buildings and other improvements thereon and therein, including tracks, rail, pipelines and underground improvements except machinery belonging to Lessee and all dumps, ores or other minerals detached or broken down from said premises, but still remaining thereon, together with the appurtenances, in good order and condition, with all drifts, shafts, tunnels, winzes and other passages and workings, thoroughly clear of loose rock and rubbish, and drained, and the mine ready for immediate continued working (accidents not arising from negligence alone excusing) without demand or further notice.

28. Time is the essence of this contract in all particulars.

29. All of the operations of the Lessee under this lease shall be so conducted as to fully comply in every respect with the laws of the State of -----.

30. The Lessee hereby agrees to carry a Workmen's Compensation policy in a responsible Company, said policy to be placed in force forthwith.

31. This agreement shall be binding and enforceable by the respective successors, heirs, executors, administrators and assigns of the parties hereto.

In witness whereof the respective parties hereto have caused this instrument to be executed, on the day and date first above written.

Executed in duplicate.

FORM No. 18

LEASE WITH PRIVILEGE OF PURCHASE

(Precedent in *Settle v. Winters*, 2 Idaho (Hasb.) 215, 10 Pac. 216.)

This indenture, with privilege of purchase, made and executed this ----- day of -----, 19-----, by and between -----, the parties of the first part, and -----, the parties of the second part.

Witnesseth: That the said parties of the first part, for and in consideration of ----- dollars to them in hand paid, at and before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, do hereby covenant and agree to and with the said parties of the second part, their heirs and assigns, as follows, to wit: That said parties of the first part hereby grant, demise, and lease to the said parties of the second part, the following described property, situate, lying and being in ----- Mining District, County of -----, State of ----- and more particularly described as follows, to-wit:

(Description)

Also that certain ----- and -----, known as the -----, now lying on said ----- from the ----- day of ----- 19-----, on the expiration of a certain lease of the ----- and ----- mines, executed and delivered by the parties of the first

part to-----and-----; or in the event of the assignment of said lease to the parties of the second part before the said-----day of-----19----, then from the date of such assignment until the-----day of-----, 19----, upon the following terms and conditions:

That said parties of the second part, so long as they shall deem fit to hold said property, and to mine and extract ore therefrom and to pay the said parties of the first part-----of the gross proceeds in manner hereinafter specified; and when the sum of-----dollars shall have been paid, either out of the proceeds of the said property hereby leased, or otherwise, by the said parties of the second part to the parties of the first part, the said parties of the first part hereby covenant and agree, for themselves, their executors, administrators and assigns, to and with said parties of the second part, their heirs and assigns, to convey to them by good and sufficient deed all of the above described property, free and clear of all incumbrance upon such payment, provided, the said sum of-----dollars shall have been paid on or before the-----day of-----19----.

And the said parties of the second part hereby covenant and agree to enter upon said property, and to mine and extract ore from the same so long as they shall find it profitable; to do the work in a proper and workmanlike manner, and at their own cost and expense; and to hold and keep said property free and clear of all costs, charge or lien for the working of the same; and out of the gross proceeds of said mines to pay-----thereof, as fast as taken out, to said parties of the first part in a manner hereinafter specified; and, upon the expiration of the term hereby granted, to surrender up the possession of said premises, with all the improvements, to the said parties of the first part, unless, on or before the said-----day of-----19----, the said sum of-----dollars shall have been paid; and in the event of the said parties of the second part, or their assigns failing to comply with either or any of the foregoing covenants, or any covenant, promise, or thing herein contained, on their part to be done, kept, or performed, that then it shall be lawful for said parties of the first part to re-enter, possess, and enjoy the above described property and premises, and every part thereof; and the said parties of the second part hereby agree, in the event of such non-performance on their part, to surrender possession of the said premises upon demand by said parties of the first part claiming their right to re-enter.

It is hereby mutually covenanted and agreed by and between the parties to this instrument that the said parties of the first part shall have the right, at all times, of inspecting the said mines above described, and all mining operations and work thereon; that the said parties of the second part shall have the right, at any time, to stop work on said mines when they shall find or deem the same unprofitable; that, in working said ores, at each clean-up the said parties of the second part shall and will furnish a true account of all ores extracted and milled, and all bullion received, to the said parties of the first part; that, in milling said ores so taken from said property, the said parties of the first part, if they so desire, shall have an equal right with said parties of the second part in milling the ores, cleaning and retorting the same, weighing and storing the bullion, until the said parties of the second

part receipt to them for-----of the-----proceeds; it being expressly understood that upon each clean-up the said parties of the second part are to receipt to the said parties of the first part that they own-----of the same, and that the said parties of the second part hold the same for them; and the said parties of the second part are then to dispose of the bullion to the best advantage, and to pay to the parties of the first part-----of the proceeds thereof in money, currency or coin; and upon such payment the parties of the first part will credit said purchase price of-----dollars, with the sum so received; and, lastly, that in no event shall the said properties above described, or any part thereof, be held for any claim, cost, charge, or lien for working the same by the said parties of the second part, under this instrument; but, that all such work shall be done at the expense of the said parties of the second part solely and alone; and the said parties of the first part, for themselves, their executors, administrators and assigns hereby covenant and agree to and with the said parties of the second part, their heirs and assigns, to convey, by good and sufficient deed, all the above described properties, free and clear of all incumbrances, to them, the said parties of the second part, or their assigns, at any time, upon the payment to them, the said parties of the first part, of the sum of-----dollars, either out of the proceeds of the said mines, or otherwise, on or before-----in the manner hereinbefore specified, by the said parties of the second part, or their assigns. And it is hereby expressly and mutually covenanted and agreed that this covenant shall be taken, held and deemed a covenant real, running with and binding the land.

In witness whereof, the said parties have hereunto, in duplicate set their hands and seals this-----day of-----, 19-----.

FORM No. 19

OIL AND GAS LEASE *

(The subjoined is an approved form of an oil and gas lease. It is commonly called the 'Texas Lease'.)

Agreement, made and entered into the-----day of,
----- 19-----, by and between-----
----- of -----
County of-----, State of-----,
part----- of the first part hereinafter called lessor (whether one or more) and-----, party of the second part hereinafter called lessee.

Witnesseth, That the said lessor, for and in consideration of -----dollars cash in hand paid, receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed, ha-----

* For another form of oil lease, see *Washburn v. Gillespie*, 261 Fed. 42. See, also, *Ricketts on Mines*, 2d ed., Form No. 40. For form of oil leases in Indiana, Kansas, New York, Pennsylvania, Tennessee, see *Donahue Pet. and Gas.*, §§ 23-34; *Thornton's Oil and Gas*, appendix.

For an "entertaining and illuminating discussion of the faults of lease forms, which too often are cluttered with obsolete, vague and redundant phraseology," see Robert M. Pease, in *Oil Bulletin* (Los Angeles), Vol. XVII, No. 1, pp. 25-27, January, 1931.

granted, conveyed, demised, leased and let, and by these presents do____
 grant, convey, demise, lease and let exclusively unto the said lessee, for
 the sole and only purpose of mining and operating for oil and gas, and
 of laying pipe lines, and of building tanks, power-stations and struc-
 tures thereon to produce, save and take care of said products, all that
 certain tract of land situated in the County of_____,
 State of_____, Section_____,
 Township_____, _____ Range, _____, _____,
 _____M., and containing_____acres, more or less.

It is agreed that this lease shall remain in force for a term of
 _____years from this date, and as long thereafter as oil or gas,
 or either of them, is produced from said land by the lessee.

In consideration of the premises the said lessee covenants and
 agrees:

1st. To deliver to the credit of lessor, free of cost, in the tanks or
 pipe lines to which he may connect his wells, the equal_____
 part of all oil produced and saved from the leased premises.

2d. To pay the lessor_____dollars
 each year in advance, for the gas from each well where gas only is
 found, while the same is being used off the premises, and lessor to have
 gas free of cost from any such well for all stoves and all inside lights in
 the principal dwelling house on said land during the same time by
 making his own connection with the well at his own risk and expense.

3d. To pay lessor for gas produced from any oil well and used off
 the premises at the rate of_____dollars
 per year, for the time during which such gas shall be used, said pay-
 ments to be made each three months in advance.

If no well be commenced on said land on or before the_____
 day of_____, 19____, this lease shall terminate as to both
 parties, unless the lessee on or before that date shall pay or tender to
 the lessor, or to the lessor's credit in the_____Bank at
 _____, or its successors, which shall continue
 as the depository regardless of changes in the ownership of said land,
 the sum of_____dollars, which shall
 operate as a rental and cover the privilege of deferring the commence-
 ment of a well for_____months from said date. In like manner and
 upon like payments or tenders the commencement of a well may be
 further deferred for like period of the same number of months succes-
 sively. And it is understood and agreed that the consideration first
 recited herein, the down payment covers not only the privileges granted
 to the date when said first rental is payable as aforesaid, but also the
 lessee's option of extending that period as aforesaid, and any and all
 other rights conferred.

Should the first well drilled on the above described land be a dry
 hole, then, and in that event, if a second well is not commenced on said
 land within twelve months from the expiration of the last rental period
 for which rental has been paid, this lease shall terminate as to both
 parties, unless the lessee on or before the expiration of said twelve
 months shall resume the payment of rentals in the same amount and in
 the same manner as hereinbefore provided. And it is agreed that upon
 the resumption of the payment of rentals, as above provided, that the
 last preceding paragraph hereof, governing the payment of rentals and

the effect thereof, shall continue in force just as though there had been no interruption in the rental payments.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, the royalties and rentals herein provided shall be paid the lessor only in the proportion which ----- interest bears to the whole and undivided fee.

Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for his operations thereon except water from wells of lessor.

When requested by lessor, lessee shall bury his pipe lines below plow depth. No well shall be drilled nearer than 200 feet to the house or barn now on said premises. Lessee shall pay for damages caused by his operations to growing crops on said land. Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the estate of either party hereto is assigned—and the privilege of assigning in whole or in part is expressly allowed—the covenants hereof shall extend to the assigns and successive assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be binding on the lessee until after the lessee has been furnished a written transfer or assignment or a true copy thereof; and it is hereby agreed that in the event this lease shall be assigned as to a part or as to parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of said lands upon which the said lessee or any assignee thereof shall make due payment of said rental.

Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the lessee shall have the right at any time to redeem for lessor, by payment, and mortgages, taxes or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof.

In testimony whereof, we, in duplicate, sign, this the----- day of -----, 19-----.

FORM No. 20

ASSIGNMENT OF LEASE—OIL AND GAS *

(Precedent in *Rateliff v. Paul*, 114 Kan. 506, 220 Pac. 279)

Know all men by these presents: That -----, on this ----- day of -----, for and in consideration of one dollar and other considerations, the receipt whereof is hereby acknowledged, do hereby assign, sell, transfer and set over unto ----- all ----- right, title, and interest, in and to an oil and gas mining lease, the land assigned being described to wit: (Description) (Record reference to lease). That----- are the lawful owner-- and holder-- of said oil

* For assignment of United States oil and gas leases, see General Land Office Circular No. 1504, as amended March 9, 1942.

and gas mining lease, and the same is free from all incumbrances and that ----- have good right and title to sell and assign the same. Witness ----- hand-- the day and year first above written.

I, -----, wife of the said -----, for the considerations aforesaid, do hereby join in this assignment and hereby release and relinquish all my rights of dower and homestead in and to the lease and rights above assigned and transferred.

Witness my hand this ----- day of -----, 19--.

FORM No. 21

CONJOINT DEED AND LEASE *

(Precedent in Wright v. Carter Oil Co., 97 Okla. 46, 223 Pac. 835)

State of ----- }
County of ----- } ss.

Know all men by these presents: That ----- and -----, parties of the first part, in consideration of the sum of ----- dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto -----, the party of the second part, an undivided ----- interest in and to all of the mineral rights, including oil, natural gas and petroleum in ----- (description) in ----- County, State of -----, with the right and privilege to the grantors and grantee, or either of them, to go on said land and explore, operate, drill and mine for oil and gas, and other minerals, and to sell the products thereof and divide the same or the proceeds thereof as their interests appear and as provided herein. It is expressly understood, however, that this grant is subject to a certain oil and gas lease now on said premises, dated -----, made and executed by the grantors to the ----- Company.

Signed and delivered this the ----- day of -----.

Witnesses: -----

FORM No. 22

EXTENSION OF LEASE

(Precedent in Pellissier v. Pan-American Co., 62 Cal. A. 546, 217 Pac. 570)

The lessor-- hereby agree-- that in lieu of commencing and prosecuting operations, for the drilling of a well upon said land described in and leased by said indenture of lease, the lessee-- may, if ---- shall so elect, pay to the lessor-- on the-- day of each and every calendar month, for an additional period of ----- months, commencing on the

* For additional forms of a conjoint deed and lease, see Texas Co. v. Davis, --- Tex. C. A. ---, 254 SW. 304; Munsey v. Marnet Oil Co., --- Tex. C. A. ---, 254 SW. 311.

----- day of -----, as and for rental for said land the sum of ----- dollars per month, and such payments so made from month to month, shall relieve the lessee-- of and from all obligations to commence or prosecute any drilling or other operations upon said land during such month.

In witness whereof the said lessor-- ha-- hereunto set ----- hand-- the ----- day of -----, 19--.

FORM No. 23

NOTICE OF FORFEITURE OF LEASE

(Precedent in Mathews Slate Co. v. New Empire Slate Co.,
122 Fed. 972)

To----- (lessee) and----- assigns and employees:

Take notice that under and by virtue of the provisions of the lease from the----- Company to----- bearing date the----- day of-----, 19--, that the said company has exercised and does hereby exercise its option to terminate this lease and to reenter upon and possess itself of the premises demised for the reasons that the said ----- and his successors in interest have failed to keep and perform their promises, contracts, and agreements in said instrument set forth, as follows:

(Insert ground of forfeiture)

And you are hereby notified that all rights and privileges conveyed and contracted under said instrument have become forfeit and are hereby terminated.

Dated-----, 19--.

FORM No. 24

NOTICE OF FORFEITURE AND TERMINATION

To----- and to the----- Company, a corporation.

You and each of you will please take notice that that certain indenture or agreement, made and entered into on the----- day of-----, 19--, by and between the undersigned----- and----- and signed by said----- on----- to the----- Company, has been forfeited and terminated, and the undersigned hereby elects to and does declare the same forfeited and terminated because of the failure of the said----- and the said----- Company to commence active work as in said indenture or agreement provided, on the----- day of-----, 19--.

And you and each of you will further take notice that the undersigned without in any way waiving the forfeiture and termination of said lease and agreement, for the reason aforesaid, does hereby elect and does terminate the same and does hereby demand that you and each of you surrender and quitclaim to the undersigned forthwith any right, title and interest you have or have ever had by virtue of said lease or agreement in or to any part of the lands and premises

situate in _____ County, State of _____, and more particularly described in said lease or agreement, as follows, to wit:

(Description)

In witness whereof, the said _____ has hereunto set his hand this _____ day of _____, 19____.

Witness:

FORM No. 25

GAS AGREEMENT

This agreement, made and entered into this _____ day of _____, 19____, by and between _____ as Lessor (whether one or more), and _____ as Lessee.

Witnesseth:

Whereas the Lessor is now drilling or contemplating the drilling of an oil well or wells and producing natural gas therefrom in the district known as _____ and more particularly described as _____ and _____

Whereas it is thought that said gas will contain in gaseous form certain hydrocarbons, which are liquids at ordinary atmospheric temperatures and pressures, said hydrocarbons being hereinafter referred to as "gasoline," and

Whereas it is the intention and desire of the parties hereto that the Lessee extract the gasoline contained in said gas by means of one or more plants to be operated by the Lessee; now, therefore,

The parties hereto do hereby agree as follows:

First: The Lessor hereby grants unto the Lessee the sole and exclusive right or privilege to extract gasoline from any and all natural gas produced during the term hereof from any and all wells now drilled or drilling or that may hereafter be drilled on the property hereinbefore described, together with the sole and exclusive right or privilege of collecting said gas from said wells and transmitting the same to the plant or plants of the Lessee.

Second: The Lessor grants to the Lessee a right of way for the employees and vehicles of the Lessee over and across said lands of the Lessor for any and all purposes necessary or proper in connection with the business of the Lessee, and a right of way for the erection, construction, maintenance and operation of telephone and telegraph lines, oil pipe lines, wet and dry gas lines and water lines, all of said rights of way to be at such points as shall be designated by the Lessor and the right to construct, maintain and operate plant or plants for the extraction of gasoline and marketing of dry gas, all of which shall be used in such manner as not to unreasonably interfere with the operation of the Lessor.

Third: The Lessor shall use reasonable diligence to save and collect said gas so that the same may be delivered to the Lessee in accordance herewith, but neither party hereto shall be under any obligation to store gas. The Lessor shall have the right to disconnect any well from

the pipeline system of the Lessee during such times as the connection of said well with the pipeline system of the Lessee would materially interfere with the production of oil from well.

Fourth: Said natural gas produced from any well shall be delivered to the Lessee at the casinghead of said well but if the gas from said well is produced with the oil therefrom, then said gas shall be delivered to the Lessee at trap or other apparatus, which shall be installed by the Lessor for the separation of the gas from said oil. The Lessee shall not be required to take delivery of any gas at any time at a pressure less than that then existing on the Lessee's intake lines. The Lessor shall use reasonable diligence to prevent air from becoming mixed with said gas prior to its delivery to the Lessee.

Fifth: In the event the gasoline content of said natural gas is less than-----tenths of a gallon per thousand cubic feet of gas, then the Lessee shall have the right either to treat said gas or class it as dry gas. The Lessee shall not be obligated to accept and treat in excess of-----cubic feet of natural gas hereunder in any one day.

Sixth: It is particularly understood and agreed that the Lessor shall determine and regulate the pressure at which the gas and/or oil from any wells shall be produced, and that the Lessee shall not cause pressures which are less than atmosphere to exist on any of said wells or on any trap connected to any of said wells, without the consent of the Lessor. The Lessee shall operate its plants, pipelines, machinery and equipment in such manner as not to interfere with the production of oil from any and all of said wells.

Seventh: The Lessee agrees to lay pipelines connecting the wells on said lands with the plant of the Lessee.

Eighth: The Lessee may receive and treat gas belonging to other parties at the plant or plants at which the Lessor's gas is received or treated and shall have the right to mix or commingle such other gas with that obtained from the Lessor.

Ninth: The Lessee shall measure the gas received from each separate lease, by means of good and sufficient recording meters of standard make, which shall be installed, maintained and operated by Lessee. The Lessee shall also install good and sufficient meters of standard make for measuring the total amount of gas received from all sources at each of its plants where the Lessor's gas is treated, together with good and sufficient recording meters of standard make to measure the total amount of dry gas discharged from said plants. The Lessor shall have the right to have a representative present at such times as any of the meters are read and to examine any of said meters for the purpose of checking the measurements as determined by the Lessee. The amount of gas received from any separate lease, shall be as shown by the reading of the meter measuring said gas, provided, however, that if a test of any meter shows that the same does not register within two (2%) per cent fast or slow of the correct amount, then proper correction of the amount of gas shown by the reading of said meter and said test shall be made but for the current calendar month only. Said meters shall be tested from time to time by the Lessee to determine the accuracy thereof. Upon demand of the Lessor any of said meters shall be tested at any time. If upon such test, it develops that said

meter registers within ---- per cent (----%) fast or slow of the correct amount, then the expense of said test shall be borne by the Lessor otherwise, such expense shall be borne by the Lessee. The Lessor shall have the right to have a representative present during the testing of any of said meters.

Tenth: The Lessee shall from time to time and at least once in thirty days make such tests of the gas delivered to the Lessee from each separate lease, as will enable the Lessee to determine with reasonable accuracy the amount of gasoline contained therein per thousand cubic feet.

Eleventh: The amount of gasoline produced from the gas belonging to the Lessor when mixed or commingled with other gas, shall be such proportion of all the gasoline produced from said mixed or commingled gas as the computed gasoline in the Lessor's gas bears to the computed gasoline in all of said mixed or commingled gas, as determined from the meter readings and tests hereinbefore mentioned. The amount of dry gas to be credited to the Lessor shall bear the same proportion to the total dry gas discharged from said plant or plants as the amount of gas received from the Lessor bears to the total amount of gas received by the Lessee from all sources at said plant, it being understood that the Lessee shall have the right to use so much of the dry gas at any plant as may be reasonably used or consumed or lost in the operation of said plant in the extraction of gasoline therefrom before same is discharged from said plant.

Twelfth: The Lessee shall return from the dry gas due to the Lessor, as much of said dry gas, discharged from the plant as the Lessor may require in operating the Lessor's lease and drilling activities. If there remains any dry gas due to the Lessor, the same may be sold by the Lessee, and in the event of such sale the Lessee agrees to pay the Lessor ----- per cent (---%) of the proceeds of such sale or sales as royalty. It is agreed that such gas as is returned to the Lessor shall be delivered to the Lessor's property on which active operations are being conducted at the point nearest the distributing lines of the Lessee. It is agreed that the Lessee will not be required to return such dry gas at a pressure exceeding ----- pounds per square inch at the plant at which it is obtained.

Thirteenth: The Lessee agrees to pay as royalty ----- per cent (---%) of the proceedings from the sale of the gasoline manufactured from the gas of the Lessor.

Fourteenth: The Lessee agrees to furnish the Lessor with a report, not later than the ----- day of each month, covering the operations of the Lessee during the preceding month, and showing:

- (a) The amount of Lessor's gas received from each separate lease.
- (b) The amount of Lessor's gasoline saved and sold.
- (c) The amount of dry gas returned to Lessor.
- (d) A statement of the balance of the Lessor's dry gas; and
- (e) A statement of royalties earned.

It is agreed that any and all objections to any of such reports must be made to the Lessee in writing not later than fifteen (15) days after the receipt thereof by the Lessor, and that such failure by the Lessor to make such objections in writing within such period of fifteen (15)

days shall create a conclusive presumption that such report is correct in all particulars, and that if such fifteen (15) day period shall have elapsed without any such written objections having been made to the Lessee, the Lessor shall not thereafter have the right to question or dispute such report in any way.

Fifteenth: In the event that at any time or from time to time the Lessee is required to pay any tax, license or governmental charge, directly or indirectly, upon that part of the gasoline manufactured from the gas of the Lessor to which the Lessor is entitled as royalty or upon the proceeds of the sale of such royalty gasoline, the Lessor shall reimburse the Lessee for the full amount of such tax, license or governmental charge so paid by the Lessee.

Sixteenth: The Lessee agrees to promptly pay before the same becomes delinquent all taxes, which may be assessed or levied during the term of this agreement, upon any property erected, placed or maintained by the Lessee upon any of the lands of the Lessor. In the event that the Lessee fails so to do, the Lessor shall pay such tax and the Lessee shall refund all amounts so paid by the Lessor, with interest from the date of such payment at the rate of ---- per cent (----%) per annum upon demand being made therefor.

Seventeenth: The Lessee shall not suffer any lien or liens to be filed against the plants, pipelines, machinery and equipment, or any other property placed by the Lessee upon the lands of the Lessor for work, labor, material or supplies furnished in connection therewith, and if any such lien or liens is filed thereon the Lessee agrees to remove the same at its own expense and cost and shall pay any judgments which may be entered thereon or thereunder. Should the Lessee fail, neglect or refuse so to do, the Lessor shall have the right to pay any amount required to release any such lien or to defend any action brought thereon and to pay any judgment entered therein and the Lessee shall be liable to the Lessor for all costs, damages, and counsel fees, and any amounts expended in defending any proceedings or payment of any of said liens or any judgment obtained therefor.

Eighteenth: It is expressly understood and agreed that any failure of any party hereto to perform any of its obligations hereunder, shall be deemed excused if and to the extent that such failure is due to any act of God, inevitable accidents, strikes, interference by any authorized public authority, or to any other cause or condition beyond the reasonable control of the party so failing to perform.

Nineteenth: The term "natural gas" or "gas" as used herein means that natural gas which in its original state as produced, and before the extraction of any gasoline therefrom, contains gasoline in commercial quantities and all other natural gas is referred to herein as "dry gas."

Twentieth: It is agreed that this contract will begin from the date hereof and will continue as long as gas is produced by the Lessor in commercial quantities from said wells. All material and equipment used and/or installed upon the lands of the Lessor by the Lessee shall remain the property of the Lessee and upon the termination of this lease for any cause, the Lessee shall have ninety (90) days to remove its property off the premises, subject, however, to the conditions stated in paragraph seventeen (17) hereof. The Lessee may also remove the

material and equipment in or appurtenant to any plant or plants constructed hereunder, when such plant or plants can no longer be operated at a profit.

Twenty-first: The Lessors may elect, upon thirty days notice, in writing, to take their gasoline royalty either in cash or in kind; such election shall be exercised for periods of not less than six months. In the absence of an election by the Lessors, royalty shall be deemed payable in cash.

Twenty-second: Payments for royalty in cash shall be made by the Lessee to the Lessors not later than the _____ (____th) day of each calendar month for sales during the previous calendar month.

All fuel delivered to the Lessor shall be computed on the basis of cost to the Lessee, and the Lessee shall be entitled to retain from the dry gas accruing hereunder to the Lessor amounts sufficient to repay the Lessee for the dry gas so advanced.

The Lessor covenants and warrants title to the property herein leased and agrees to defend the rights of Lessee herein against the claims of all parties affecting the rights of the Lessee.

This agreement shall bind and inure to the benefit of the successors and assigns of the respective parties hereto.

In witness whereof, the parties hereto have caused this instrument to be executed in duplicate by their respective officers thereunto duly authorized, the day and year first above written.

FORM No. 26

CONVEYANCE AND ASSIGNMENT OF ROYALTY INTEREST

(Precedent in Callahan v. Martin, 2 Cal. 2d 110, 43 Pac. (2d) 788)

Know all men by these presents: That _____ and _____, his wife, of _____, hereinafter designated as the
(residence) ^{td}
sellers, for and in consideration of the sum of _____ dollars, and other valuable consideration-- to them in hand paid by _____ and _____, husband and wife, of _____

(residence)
hereinafter designated as the buyers: Do hereby grant, bargain and convey unto said _____ and _____, husband and wife, as joint tenants, _____ per cent landowner's royalty, being _____ per cent of all oil and gas and other hydro-carbon substances and/or minerals produced or extracted and saved on the following described real property located in the county of _____, state of _____, to wit:

(Description)

To have and to hold unto the said buyers or the survivor of them, their heirs and assigns forever.

In Witness Whereof, the said sellers have hereunto signed their names this _____ day of _____, 19____.

FORM No. 27

ESCROW AGREEMENT *

(Precedent in *Craig v. White*, 187 Cal. 496, 202 Pac. 648)-----Company

Dear Sirs:

There is herewith delivered to you a deed of conveyance dated-----, from the undersigned, -----, as grantor, to-----, as grantee, embracing-----in-----County, State of-----, which deed is placed in escrow with you and is to be held by you and delivered to said grantee, his heirs or assigns, upon the condition that he shall pay, and when he or they shall have paid to you for account of the undersigned, or his heirs or assigns, the sum of-----dollars (\$-----), in lawful money of the United States, at the time and in the manner following, to wit:-----dollars (\$-----) on or before the-----day of-----, and a like sum on or before the-----day of-----of each-----thereafter until the said sum of-----dollars (\$-----) is paid. Together with interest upon all of the deferred payments at the rate of-----per cent (---%) per annum from-----, until paid, interest payable-----at the same time as the payments of the principal installments as above. The whole unpaid balance may be paid at any time and if the same shall be paid within-----, all interest which shall have been actually paid shall in that event be credited upon the principal, and considered as having been paid on that account and not as interest.

If the said grantee, his heirs or assigns, shall fail to make payment of any of such installments at or before maturity, or within-----days thereafter, he or they shall forfeit all right to have a delivery of the said deed, and shall forfeit all right to the moneys which may have been paid, and the said deed shall be re-delivered to the undersigned, his heirs or assigns, free from all claims or rights of the said grantee, his heirs or assigns.

Witness my hand at-----, this-----day of-----.

I accept the terms of the within conditions. (Optioner.)

(Optionee.)

FORM No. 28

INSTRUCTIONS TO ESCROW HOLDER

(Precedent in *Pollard v. Sayre*, 45 Colo. 195, 98 Pac. 816)

To Bank-----at-----.

Herewith enclosed find deed from the undersigned-----conveying the-----and-----mining claims in-----Mining District, County of-----State of----- This deed is to be held by you in escrow subject to delivery to-----his heirs or assigns, upon their complying with the conditions of a-----said property executed by us to said-----, on the-----day of-----, 19--, a copy of which is enclosed herewith. Upon the pay-

* For another form of escrow agreement see *Shreeves v. Pearson*, 194 Cal. 702, 230 Pac. 448.

ment of any sum as therein provided, -----thereof is to be placed to the credit of-----.

Dated-----, 19--.

FORM No. 29

POOLING AGREEMENT

To the Bank-----.

Gentlemen:

We, -----and-----severally deliver to you the following certificates, calling for the number of shares of capital stock of the -----Mining Company and issued to the persons respectively as herein named:

Certificate No.-----to-----for-----shares.

Certificate No.-----to-----for-----shares.

These certificates, numbers-----to-----inclusive, are to be held by you as a depository, and pursuant to the agreement of said persons (herewith evidenced by their signatures to this paper), are not to be redelivered by you to said persons, or any of them, except in the event you should receive instructions in writing signed by all of such persons, it having been, and being now agreed by them, that neither said certificate nor the shares of stock called for thereby, nor any portion thereof, shall be sold, transferred or assigned to any person, or persons, or corporation or corporations without the consent, in writing, of all the said persons being obtained as aforesaid; but, provided, however, that said shares, or any of them, may be sold, transferred and assigned by any of said persons to any other of said persons without such consent.

The foregoing shall be construed both as a letter of instructions to the Bank of -----, and as an agreement between the undersigned.

In witness whereof, the said parties have hereunto set their hands, on-----, this, the----- day of -----, 19--.

Addendum

(Precedent in Smith v. S. F. Ry. Co., 115 Cal. 584, 47 Pac. 582)

It is mutually agreed between said persons that for the purpose of keeping control of said corporation in the interest of themselves (and of all persons who shall buy any portion of said stock from them) that they will during the period of -----, from the date hereof, retain the power to vote said shares in one body; and that the vote which shall be cast by said shares, whether for directors, or for any other purpose, shall be determined by ballot between them or their survivors.

For voting trust see Cal. Civil Code, § 321a.

FORM No. 30

GRANT DEED

(Precedent in Carter v. Bacigalupi, 83 Cal. 187, 23 Pac. 363)

I, -----, grant to ----- all that certain mining claim situate in the ----- Mining District, County of -----, State of -----, and being the ----- mining claim more fully described in the notice of location thereof which is recorded in the office

of the county _____ of said county on the ____ day of _____, 19__, in Book _____, at page ____ of the record of _____ (quartz claims) of the records of said county and which said record is hereby referred to and made a part hereof, (or being mineral survey No. ____.)

Witness my hand this ____ day of _____, 19__.

----- Addendum

(Precedent in Catron v. South Butte Co., 181 Fed. 941)

It being understood that the surface only is hereby conveyed and that all minerals and metals and ores below the surface with the right to mine, prospect for, and extract the same, is hereby reserved to the parties of the first part, their heirs, representatives and assigns, and excepted and excluded from and not passed by this conveyance. But the said parties of the first part, their heirs, representatives and assigns covenant and agree that they will not mine or excavate under the surface of that portion of the lot above described, and which is covered by the said _____ lode, nearer to the surface than _____ feet from the present surface of the ground, but will in their mining operations, leave _____ feet below the present surface of the ground for support. But they do not obligate themselves, or their heirs, representatives or assigns, to support or maintain the said _____ feet by timbers or otherwise, but only not to mine or excavate within _____ feet of the present surface.

And the said parties of the first part, for themselves, their heirs, personal representatives, and assigns, covenant and agree that they will not mine or excavate under the surface of that portion of said _____ lode claim which is hereinbefore described, and hereby conveyed nearer to the surface thereof than _____ feet, but will so conduct their mining operations as not to injure the surface rights hereby conveyed and so as to at all times abundantly protect said surface with a depth of _____ feet thereunder.

FORM No. 31

DEED OF TRUSTEES FOR CORPORATION

(This form is not applicable within California since the law of 1917. Usher v. Henkel, 205 Cal. 413, 271 Pac. 494.)

This indenture, made this _____ day of _____, A. D. 19__, between _____ and _____ as trustees for _____ Company and its stockholders, all of _____, the parties of the first part, and _____ of _____, in the State of _____, the part ____ of the second part, witnesseth:

Whereas, _____ Company, a corporation heretofore duly organized and existing under and by virtue of the laws of the State of _____, and having its principal place of business at _____ in the County of _____ and State of _____ was, at the time of the forfeiture of its charter hereinafter particularly mentioned and prior thereto and at all such times had and now has the record title to all and singular those certain mining claims, ground and premises situate, lying and being in the _____ Mining District, County of _____,

State of _____, known as _____ and hereinafter more particularly described; and

Whereas, at the time of such forfeiture, and prior thereto, and in accordance with and as required by its articles of incorporation the corporate powers, business and property of said corporation were conducted, exercised and controlled by a board of _____ directors, and

Whereas, said corporation continued to be a valid corporation under and by virtue of the laws of the State of _____, until, on or about the _____ day of _____, 19____, on which last named day the charter of said corporation became and was forfeited by reason of the failure and neglect of said corporation to pay to the Secretary of State of the State of _____, the license tax for the year _____ as provided to be paid by corporations under the provisions of a certain act of the legislature of the said State of _____, entitled "An Act, etc., _____ Approved _____, 19____," and

Whereas, said corporation has not been relieved from said forfeiture nor been rehabilitated under the provisions of said act and since the day lastly hereinbefore aforesaid the said corporation has had and now has no power nor right to do business; and

Whereas, prior to the time of said forfeiture and on, to wit; the _____ day of _____, 19____, _____ and _____ were duly elected as the directors of said corporation and thereafter acted as such. That while acting as such directors and prior to said forfeiture the said _____ died on the _____ day of _____, 19____. That no person was ever elected to fill the vacancy caused thereby and at the time of said forfeiture of said charter the said parties of the first part _____ were the only directors of said corporation in office and since said time have been and now are the sole and only directors of said corporation and by reason of said forfeiture of the said charter of said corporation have become and now are the trustees for the said _____ company and its stockholders; which said corporation had a capital stock of _____ dollars, divided into _____ shares.

Now, therefore,

The said parties of the first part, as trustees for said _____ Company and its stockholders, in consideration of the sum of _____ dollars, to them in hand paid, hereby remise, release and quitclaim to the said part _____ of the second part, _____ heirs and assigns forever, all of the rights, title and interest which the said parties of the first part, as such trustees for the said corporation, said _____ Company and its stockholders, now hold or have a right to convey, to all and singular all of the said mining claims so owned, claimed or held by the said _____ Company.

(Description)

The said parties of the first part so make this conveyance upon the express terms and conditions that thereby the said parties of the first part personally assume no liability or responsibility to the said part _____ of the second part, or _____ heirs or assigns, but in this instrument are acting solely as trustees for the said corporation, said _____ Company and its stockholders, under the provisions of said act hereinbefore particularly mentioned.

In witness whereof, we have hereunto set our hands the day and year first above written.

----- As Trustees for
----- Company
----- and its Stockholders.

FORM No. 32

RATIFICATION OF DEED *

Know all Men by These Presents: That we-----and----- former-----stockholders of-----Mining Company, a corporation heretofore duly organized and existing under and by virtue of the laws of the State of-----, the charter of which corporation was and it still is forfeited by reason of its failure to pay to the Secretary of State of the State of-----, the license tax provided to be paid by corporations and which said corporation had a capital stock of-----dollars, divided into-----shares of the par value of-----dollars each (of which-----shares were unissued), and severally the owners and holders of record on the books of said former corporation of the number of shares of the said capital stock of said former corporation set opposite our respective signatures hereto, and together owning and holding more than----- of the entire issued and outstanding capital stock of said corporation at the time of said forfeiture, being fully advised in the premises, hereby agree, consent to, approve of, ratify and confirm the foregoing deed of conveyance.

In witness whereof, we have hereunto set our hands this the----- day of-----, 19-----.

Name of Stockholder.

No. of Shares.

CERTIFICATE OF FORMER SECRETARY

I, -----, do hereby certify that I was the duly appointed and acting secretary of the-----Mining Company, the corporation in the foregoing deed of conveyance named, prior to and at the time of the forfeiture of its charter as aforesaid, under the laws of the State of----- That the capital stock of said corporation was -----dollars, divided into-----shares, of the par value of-----dollars each. That no more than-----shares of said capital stock of said corporation had been issued at the time of the forfeiture of the charter of said corporation as in the deed of conveyance hereto attached, specifically mentioned, and said-----shares were the entire capital stock of said corporation then outstanding.

And I do further hereby certify that at the time of said forfeiture of said charter the said parties of the first part in said deed of conveyance named, viz:-----and-----, were the only directors of said corporation in office and since said time have been and now are the sole and only directors of said corporation and by reason of said forfeiture of said charter of said corporation have become and now are the trustees for the said-----Mining Company and its stockholders. And I do further hereby certify that the persons signing the above and foregoing ratification were, at the time of said forfeiture and also at the

* See 62 Cal. A. 588, 217 Pac. 563.

time their respective signatures were affixed to such ratification, stockholders in said corporation holding of record at least_____of the said entire issued and outstanding capital stock of said corporation, and severally were, at such times, the owners and holders of record of the number of shares set opposite their respective names.

Witness my hand and the corporate seal of the said former corporation, by me hereto affixed, this, the_____day of_____, 19____.

FORM No. 33

NOTICE OF FORFEITURE—PUBLICATION *

(See Elder v. Horseshoe Co., 194 U. S. 249, 9 S. Dak. 636, 70 NW. 1060.)

To_____ and_____ and to_____ his heirs, administrators, and to all whom it may concern:

You, and each of you, are hereby notified that during the years _____ as co-locator (or as the grantee by mesne conveyances from _____ one of the locators) and as a co-owner in the _____ Claim, I did, as such co-owner expend _____ hundred dollars in labor and improvements upon the said _____ Claim, described as follows, viz: _____ in the _____ Mining District, County of _____ State of _____.

Said _____ Claim was located on _____, by _____, and _____.

The notice of location of said _____ Claim was recorded on _____ in the Office of the County Recorder of said County of _____, in Book of _____, page _____ of the records of said County, which said record is hereby referred to and by reference is made a part hereof. Said amount, to wit: _____ hundred dollars, being one hundred dollars a year, which is the amount of annual expenditure required to hold the said _____ Claim for the year ending at twelve o'clock noon on July 1st, _____ and also for the year ending at twelve o'clock noon on July 1st, _____.

And you, and each of you, are hereby further notified that if within ninety (90) days after this notice by publication, you, or any one of you, fail or refuse to contribute your proportion of such expenditure, viz: _____ dollars, being _____ dollars for each of said years, your interests, and each of your interests, in said _____ Claim shall be forfeited to and become the property of the subscriber under the provisions of §2324 of the Revised Statutes of the United States.

_____ Co-owner.

(State address)

Dated _____ 19_____.

* When, in California, notice is given by publication in a newspaper, there shall be attached to a printed copy of such notice, an affidavit of the printer, or his foreman, or principal clerk of such paper, stating the first, last and each insertion of such notice therein, and where the newspaper was published during that time, and the name of such newspaper. Such affidavit and notice shall be recorded in the office of the proper county recorder within one hundred and eighty days after the first publication thereof. Civil Code, §14260. (Re-codified in Public Resources Code, § 2317).

FORM No. 34

NOTICE OF FORFEITURE—PERSONAL SERVICE *

In the matter of the annual expenditure upon the _____
group of mines situate in _____ Mining District, County of
_____, State of _____.

To _____ and to all others whom it may or does concern:

You, and each of you, will please take notice and you, and each of
you, are hereby notified that during the year _____, to wit: During
the months of _____ and _____ of that year, as a
co-owner in and of the _____ Group of Mines, I, the under-
signed, as such co-owner, did expend the aggregate sum of _____
Hundred Dollars (\$____) in labor and improvements upon the said
_____ Group of Mines. That said _____ Group
of Mines embraces and includes the following mining locations or
claims, viz.:

(Description)

That all and singular the said mining claims or locations are situ-
ate within the _____ Mining District, County of _____,
State of _____.

That the notice of location of said _____ Lode Mining
Claim was recorded on the _____ day of _____, in the office of the
County Recorder of said County of _____, in Book _____
of _____ Records, page _____, of the Records of said county.

That the notice of location of said _____ Lode Mining
Claim was recorded on the _____ day of _____, in the office of the
County Recorder of said County of _____, in Book _____
of _____ Records, page _____, of the Records of said county.

That the notice of location of said _____ Lode Mining
Claim was recorded on the _____ day of _____, in the office of the
County Recorder of said County of _____, in Book _____
of _____ Records, page _____, of the Records of said county.

That said record of each of said mining claims or locations is
hereby referred to and by reference is made a part hereof.

Said amount, to wit: _____ Hundred Dollars (\$____) was
expended as aforesaid, in the manner following, that is to say, One
Hundred Dollars (\$100.00) of said amount was expended upon each of
said mining claims or locations in labor and improvements thereon and
said labor done and improvements so made upon each of said mining
claims or locations was and is worth and of the value of said sum of
One Hundred Dollars (\$100.00).

That said sum of One Hundred Dollars (\$100.00) so expended
upon each of said mining claims or locations as hereinbefore aforesaid,
being One Hundred Dollars (\$100.00) a year; which is the amount of
annual expenditure required to hold each of the said several mining
claims or locations for the year 19____, as extended by Act of Con-
gress to end on July 1, 19____.

And you, and each of you, will please take notice, and you, and
each of you, are hereby notified, that within ninety (90) days after this

* In California the notice and affidavits must be recorded in the office of the county recorder in the county within which the claim is situate within ninety days after the giving of such notice. Public Resources Code, § 2317. See Robinson v. Brist, 178 Cal. 237, 173 Pac. 89, but see Pomeroy v. Sam Thorpe Co., 37 Ariz. 541, 296 Pac. 255.

notice is personally served upon you, you or either, or any one of you, fail or refuse to contribute your proportion or share of said expenditure, to wit: By you said ----- the sum or amount of One Hundred Dollars (\$100.00) for said year upon each of the said several mining claims or locations constituting said ----- Group of Mines, your interests, and each of your interests, in said mining claims or locations and each and all of them, together with all costs of service of this notice, whether incurred by publication charges or otherwise, shall be and become forfeited to and be and become the property of the undersigned under the provisions of Section 2324 of the Revised Statutes of the United States.

Dated ----- 19-----.

Co-owner, residing at

AFFIDAVIT OF SERVICE

State of ----- }
County of ----- } ss.

-----, being first duly sworn, deposes and says: That he is, and was at the time of the service of the hereto attached Notice of Forfeiture, a citizen of the United States over the age of eighteen (18) years, and not in any way interested in the mines, mining claims or locations therein particularly mentioned; that he personally served the within and hereto attached Notice of Forfeiture on ----- by delivering to and leaving with him personally in the County of -----, State of -----, on the ----- day of -----, 19-----, a true copy of the hereto attached Notice of Forfeiture.

Subscribed and sworn to before me this ----- day of -----, 19-----.

Notary Public.

In and for the County of -----, State of -----.

My commission expires -----.

CORROBORATING AFFIDAVIT

State of ----- }
County of ----- } ss.

-----, being first duly sworn, deposes and says: That he is the person and co-owner giving the notice, a true copy whereof is hereto attached, marked Exhibit "A," and made a part hereof.

That on the ----- day of -----, 19-----, ----- personally served a true copy of the said notice upon -----, the person and delinquent co-owner therein named, by delivering to

and leaving said notice with said _____ personally, at the County of _____, State of _____.

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public.

In and for the County of _____, State of _____.

My commission expires _____.

FORM No. 35

ANSWER—ADVERSE SUIT

I

(Title of court and cause.)

Comes now the defendant in the above entitled action, and answering the complaint of the plaintiff herein, says:

1. Defendant avers that he declared his intention to become a citizen of the United States of America on the _____ day of _____, 19__, in the _____ Court of the State of _____, in and for the County of _____.

2. (Deny the allegations of the complaint as the facts may warrant.)

II

For a further and separate answer and defense herein defendant says:

1. (Repeat paragraph 1, ante.)

2. Defendant avers that he and his predecessors in interest and grantors under and by virtue of a location made by _____ and _____ of the premises hereinafter and in the next succeeding paragraph hereof fully described, have claimed, and defendant does still claim adversely to plaintiff an estate and interest in said portion of said pretended _____ mining claim, said portion being the alleged overlap of the said _____ mining claim upon the said alleged _____ mining claim.

3. Defendant denies that his said title, right and estate were acquired by him subsequent to said alleged acquisition of the plaintiff and avers that his right, title and estate and right of possession of, in and to all of the premises hereinafter in this paragraph described and set forth and every part thereof, is of right and that he has the exclusive right, title and interest and right of possession of the same, and every part thereof, as against the plaintiff and all others; and that such right and estate were acquired by the predecessors in interest and grantors of this defendant prior to the alleged acquisition of the said plaintiff's right or estate in said alleged _____ mining claim. And defendant avers that plaintiff has no right, title, interest in or right of possession therein or thereto, or any part thereof. That by virtue of a location made by _____ and _____, each and both of them citizens of the United States on, to wit: the _____ day of _____, 19__, as appears by reference to the notice of location thereof, which is in the words and figures following:

(Location Notice)

and by reason of mesne conveyances in writing from said _____ and _____, and their successors in interest and grantees, and by

a compliance, by defendant, and his predecessors in interest and grantors with the mining acts of Congress, the laws of the State of ----- and the rules, regulations and customs of the miners of the said ----- Mining District, wherein the said premises are situated, defendant is the owner of and entitled to the possession of said ----- mining claim, and of the whole thereof.

III

For a further and separate answer and defense herein defendant says:

1. (Repeat paragraph 1, ante.)
2. (Allege as in complaint, Form No. 39, paragraphs 2 to 4, inclusive.)

Wherefore, defendant demands judgment that he is entitled to the possession of the said mining ground in dispute and for his costs herein expended.

Attorney for Defendant.

FORM No. 36

ANSWER—KNOWN LODE WITHIN PLACER CLAIM

(Title of court and cause.)

Come now the defendants and answering the complaint herein say:

I. Defendants deny that plaintiff now is or at any time was the owner (in fee simple, or otherwise,) of all the certain real property described in the complaint herein.

Defendants deny that the plaintiff now is, or ever was at any time, the absolute owner of, or entitled to the possession of, those certain premises particularly mentioned and described in paragraph ----- of said complaint; and deny that at any time whatsoever defendants wrongfully or unlawfully entered into and upon said premises, or upon any part or portion of the same, or that they ousted and ejected the plaintiff therefrom, or from any part or portion thereof; or that these defendants have for more than ----- last prior to the commencement of this action, or at any time since, wrongfully withheld, or that they do now wrongfully withhold from the plaintiff the possession of said land and premises, or any part or portion thereof, or wrongfully withhold from plaintiff the possession of other property of any kind or character to damage plaintiff in the sum of ----- dollars, or to the damage of plaintiff in any sum whatsoever.

II. Defendants admit that they claim an interest in the said property adverse to and against the alleged right and/or title and/or interest of the plaintiff, but they deny that their said claim is without right and/or unfounded. On the contrary, defendants allege that long prior to the ----- day of -----, 19--, which is the date of the application for a placer patent made by the plaintiff herein for the said land and premises certain lodes, veins or deposits of ore or rock in place carrying minerals, were known to exist within the boundaries thereof, or by reasonable diligence should have been known to the applicant for the said patent, the plaintiff herein; that the said application did not include any application for such veins or

lodes, or any one thereof, and for that reason the same were excluded and excepted out of the patent issued on the ----- day of -----, 19--, by the government of the United States to the plaintiff herein. That subsequent to said application for patent certain lode claims were located by the defendant, -----, on such known veins or lodes, to wit:

(Description)

III. Defendants allege that on and before the day of the location of each of the above mentioned lode mining claims, hereinafter mentioned, the premises above described were mineral lands of the public domain and entirely vacant and unoccupied, and were not owned, held or claimed, by any person or party as mining ground, or otherwise, and that while the same were so vacant and unoccupied and unclaimed, to wit, on the ----- day of -----, 19--, said -----, one of the defendants herein, entered upon and located each and every of said veins and lodes and occupied each of the said locations as a lode mining claim.

IV. Defendants further allege that the said locator, said -----, upon the making of each of said locations entered into and took possession of each of said locations, mining ground and premises, erected thereon such stakes and monuments as were necessary to point out and designate the boundaries and extent of each of said lode mining claims, posted a notice of location thereon, did such work thereon and performed all such acts as were required by the mining laws of Congress, of the State of California, and by the laws, customs, rules and regulations of the miners of the district in which each of said lode mining claims are situate and filed his notice of location of each of said claims in the office of the County Recorder of the said County of -----, by whom the same was recorded on the ----- day of -----, 19--, in ----- of the ----- records of said County. That each of said notices of location are hereby referred to and by reference made a part hereof, for all purposes.

V. Defendants allege that said defendant, -----, remained in the sole possession, occupation and enjoyment of each of said lode mining claims, ground and premises and continued, from the date of each of said lode locations, to work upon, prospect and develop the same until the ----- day of -----, 19--, on which date said ----- in and by his deed in writing conveyed to these defendants, to wit: ----- and undivided ----- interest in each and all of said lode mining claims, and the defendants herein ever since have possessed and controlled, enjoyed and occupied and now are in the actual and peaceable possession of said lode mining claims, and each of them, and every part thereof.

Wherefore, defendants pray judgment that plaintiff take nothing by its said action, and that defendants be adjudged to be the owners and entitled to the possession of the said ----- lode mining claims, and of all veins, dips, spurs and orebodies contained therein and the ground and premises within the boundaries thereof; and that the said plaintiff, and all persons claiming or to claim by, through or under plaintiff, be forever enjoined and restrained from asserting any claim or title whatsoever to the above mentioned premises, or any part thereof, and from in any wise hindering or interfering with these

defendants, or their successors in interest, in the full and peaceable use and enjoyment of the same; and that defendants' title be established and quieted against plaintiff; and for their costs, and for such other relief as these defendants may be entitled to.

Attorney for defendant.

FORM No. 37

ANSWER—UNDERGROUND TRESPASS

(Title of court and cause.)

Comes now -----, the defendant in the above entitled action and answering the complaint of the plaintiff herein, says:

1. That as to whether or not the plaintiff is now, or ever was at any time, the owner of, or entitled to the possession of that certain lode mining claim known as or called the ----- lode, situated in the ----- Mining District, County of -----, State of -----, described as in the ----- paragraph in the plaintiff's complaint set forth, this defendant has not sufficient information upon which to base a belief and placing his denial upon that ground, defendant denies the same.

2. Defendant denies that any vein, lode or ledge of quartz rock in place, bearing ----- or other precious metal, is found in the said ----- lode mining claim that in its longitudinal course or strike passes into the said pretended ----- lode mining claim, through the ----- end line thereof and extends through the said mining claim in a ----- direction and lengthwise of said mining claim and passes out of said mining claim through the ----- end line thereof, or that the top or apex of said vein, or any vein, lode or ledge lies throughout the entire length of the said mining claim inside the surface thereof extended downward vertically; that said vein, lode or ledge in its downward course departs from the perpendicular at an angle of about ----- degrees from the horizontal, or at an angle from the horizontal in a ----- direction, or any direction, or that the general course or strike of said vein, lode or ledge, or any vein, lode or ledge lying within the said pretended ----- lode mining claim is nearly or quite coincident with the surface side lines of the said pretended lode mining claim, or that by reason thereof, or for any reason, the plaintiff is now, or at any time mentioned in the complaint, the owner of, or entitled to the exclusive possession of any vein, lode or ledge, or so much thereof as the top or apex thereof lies inside of the said surface boundaries of the said pretended ----- lode mining claim throughout its entire depth, or that the plaintiff has at all times, or at any time, been in possession of said pretended ----- lode mining claim, or said vein, lode or ledge, as in the ----- paragraph of said complaint mentioned, or at all.

3. Denies that the plaintiff has any lode or vein or ledge of mineral-bearing rock in place extending throughout the said pretended ----- lode mining claim, or that any vein or lode or ledge or mineral-bearing rock having its apex within the said ----- lode mining claim has any dip in a ----- direction outside the surface lines of the said pretended ----- lode mining claim.

4. Denies that any vein, lode or ledge or mineral-bearing rock in place having its top or apex within the surface lines of the plaintiff's pretended _____ lode mining claim in its course downward between vertical planes drawn downward through the end lines of said pretended _____ lode mining claim continued in their own direction in its departure from its perpendicular extends to a great depth, to wit: to a point far outside _____ of or _____ or at all, or below, or beyond the workings of the defendant, or any workings of the defendant continued in its downward course between said planes to an unknown distance, or to any distance.

5. Defendant denies that on or about the _____ day of _____, 19____, or at any other time he wrongfully or unlawfully entered into or upon that part or portion of any vein, lode or ledge having its top or apex within the lines of the said pretended _____ lode mining claim which in its course downward extends outside of and to the _____ of the vertical _____ side lines of said pretended _____ lode mining claim so continued in their own direction that the same will intersect such exterior portions of said vein, lode, or ledge having its top or apex within such surface lines of said pretended _____ lode mining claim, or that he ousted or ejected the plaintiff therefrom or from any vein, lode or ledge, or that he wrongfully took, or carried away therefrom, or converted to his own use large or valuable quantities or any quantity of ore in said vein, lode or ledge constituting the property of the plaintiff of the value of _____ dollars, or of any value, or that he has, at all times since, or at any time or since, wrongfully withheld or that he does not wrongfully withhold from the plaintiff the possession of the said vein, lode or ledge so lying to the _____ of the side line of the said pretended _____ lode mining claim between the planes drawn down through the end lines of said claim as aforesaid, or that he wrongfully withholds from the plaintiff the possession of any vein, lode or ledge, or bodies of ore, or any property of any kind or character to damage plaintiff in the sum of _____ dollars, or to the damage of plaintiff in any sum whatever.

6. Defendant alleges the truth to be that all the ores, mineral and rock that have been extracted and carried away from the point in controversy by him are and were a part of a vein, lode or ledge having its top or apex within the surface lines of the _____ lode mining claim, the property of this defendant, which said vein, lode or ledge and ores belonged to and were and are the property of this defendant by virtue of the same being a part of the _____ lode mining claim, located on the _____ day of _____, 19____, by the grantors and predecessors in interest of this defendant, which said _____ lode mining claim is now the property of this defendant, together with all ores, ledges, lodes and veins having their apex or top within the surface lines of the said _____ lode mining claim.

7. Defendant denies that any of the ores, metals, minerals, rock, or earth which he has mined or removed from within the surface side lines of the said _____ lode mining claim extended downward vertically were a part of or belonged to any vein, lode or ledge having its top or apex within the surface side lines of the said pretended _____ lode mining claim, the property of the plaintiff.

8. Defendant denies that he has ever removed, extracted, mined or carried away any ores, metals, mineral rock, or earth from any vein, lode, or ledge other than a vein, lode or ledge having its top or apex within the surface of the said-----lode mining claim, the property of this defendant.

Wherefore, defendant prays that this action may be dismissed and that defendant may go hence without day and that he have and recover his costs and disbursements herein.

Attorney for defendant.

FORM No. 38

ANSWER—NEGLIGENCE

(Title of court and cause.)

(After making proper denials and admissions proceed as follows:)
And for affirmative answer defendant herein alleges:

1. The defendant herein repeats and alleges all the matters and things set forth in the subdivisions of its answer and numbered -----, and expressly makes said subdivisions, and each of them, a part of this its further and separate answer and affirmative defense the same as if incorporated herein, and prays that the said subdivisions, and each of them, be taken and deemed a part of this separate answer and defense the same as though herein set out at length.

2. That on the ----- day of -----, 19--, and at all times mentioned in the said complaint, the said mine and the ----- were in as safe and proper conditions as it is possible under the most skillful supervision of the most skillful miners to keep them and each of them. That the most approved method and manner of ----- has been adopted and was in use in said mine on said ----- day of -----, 19--. That the defendant has exercised and did exercise great care in supplying and did supply, its employees at said mine with suitable appliances and safe materials to ----- in a safe and proper condition so as to avoid all possible danger to its employees, and all persons working in or about said -----.

3. That the plaintiff was accustomed to working in mines of a similar character to that of defendant and was perfectly competent to judge of the safety of the said mine, and the safety of ----- wherein he was working, and the manner and method of ----- That the risk of working therein was assumed by the plaintiff as a part of his employment in said mine with a full knowledge of the conditions and safety thereof and of the manner and method of ----- at and before the said-----day of-----, 19--.

4. That the persons whose immediate duty it was and upon whom the responsibility rested to ----- in a safe and proper condition at the time of the plaintiff's alleged injuries, were all fellow servants of the plaintiff at the time of the said alleged accident and injury to plaintiff, and at all times prior thereto, during which the plaintiff was employed in working in the said -----.

5. That said alleged hurt or injuries were and are the result of the negligence of fellow servants of the plaintiff in ----- and not the result of any fault, negligence, neglect, intent or act on the part of defendant.

FORM No. 39

COMPLAINT—ADVERSE SUIT

(Title of court and cause.)

Comes now the plaintiff in the above entitled action and complains of the defendant, and for cause of action, alleges:

1. That the plaintiff is a citizen of the United States of America.

2. That on or about the-----day of-----, 19-----, being citizens of the United States, entered upon and discovered that certain mining ground, and mining claim since then known and designated as the-----mining claim, situated in the-----Mining District, County of-----State of-----, and then and there took possession of and located the same, after discovering therein a vein, lode or ledge of mineral bearing ore in place bearing-----by building large stone monuments at each of the corners of said mining claim and similar monuments at or near the center of each end line thereof and by placing in one of said monuments, to wit: The-----monument, a notice of location of said mining claim and designating the same as the location monument; all of said monuments being built in conspicuous places, and so placed upon the ground that the boundaries of said claim were distinctly marked on the ground and that the boundaries thereof could be readily traced. That at the time of making the said location said ground was a part of the public domain, unoccupied, vacant, and unclaimed. That the said claim so located by the above named persons was described in said notice of location as follows:

(Description)

That said notice contained the names of the locators, to wit-----and-----the date of location, the name of the claim, and such a description of the claim located with reference to a natural object and permanent monument as to identify the said claim. That thereafter, on the-----day of-----, 19-----, the said locators caused a record of said location notice to be made in the office of the County Recorder of said County of-----and that thereafter, the said locators caused a record of said location notice to be made in the office of the mining recorder of said-----Mining District.

3. That after the said location of said-----mining claim all of the said locators of said-----mining claim did, by divers conveyances grant, bargain and sell, convey and confirm all right, title and interest they had in and to said claim to divers other person or persons who, thereafter, conveyed the said mining claim to the plaintiff, who, ever since has been and now is the owner of the said-----mining claim.

4. That the plaintiff and his said grantors have performed more than one hundred dollars (\$100) worth of work on said claim each year since-----and performed work thereon of the value of-----dollars.

5. That subsequent to the said location of the said mining claim and prior to the bringing of this suit, the defendant entered upon and took possession of a portion of said-----mining claim, calling the portion so taken possession of, with other ground, the-----mining claim, and ousted and ejected the plaintiff from said portion,

and ever since then defendant has claimed, and does still claim adversely to this plaintiff an estate and interest in said portion of said mining claim, the said portion being the overlap of the said-----mining claim consisting of about-----acres, and particularly described as follows:

(Description)

as appears by reference to a diagram of said claims hereto annexed, marked Exhibit A and hereby made a part of this complaint.

6. That on or about the-----day of-----, 19----, the defendant made an application to the Government of the United States for a patent for the said-----mining claim, including the said portion of the said-----mining claim overlapped. That thereafter, and on or about the-----day of-----, 19----, and within sixty days period of newspaper publication of the notice of such application the plaintiff herein filed his adverse claim against the issuance of the patent to the said defendant with the Register of the United States Land Office at-----, that being the Land Office District in which said-----mining claim is situated said adverse claim showing the nature, boundaries and extent of such adverse claim; and the plaintiff brings this action for the purpose of determining such adverse claim and the right of possession to the said overlap hereinbefore and in paragraph 5 hereof particularly described.

Wherefore, plaintiff demands judgment that he is entitled to the possession of the said mining ground in dispute and for his costs herein expended.

Attorney for Plaintiff.

For another form of complaint see Jackson v. McFall, 36 Colo. 119, 85 Pac. 638.

FORM No. 40

COMPLAINT—ADVERSE SUIT

(Federal Court)

(Title of court and cause.)

Comes now the plaintiff in the above entitled action and complains of the defendant, and for cause of action alleges:

I. That he is a citizen of the United States of America, and was at all the times herein mentioned, continuously, and now is a citizen, resident and inhabitant of the County of-----in the State of-----.

II. That said defendant is a corporation organized and existing under and by virtue of the laws of the State of-----having its principal place of business at-----County of-----, State of-----and engaged in the business of mining in the-----Mining District, County of-----, State of-----, and that said defendant is, and at all the times herein mentioned, and prior thereto, was a citizen of said State of-----.

III. That the amount in controversy herein exceeds the sum or value of three thousand dollars (\$3,000), exclusive of interest and costs.

IV. That on and prior to the-----day of-----, 19--, the property hereinafter described and known as Section-----in Township-----, Range-----, ---M., in the-----Mining District, County

of-----, State of-----, was a part of the vacant and unappropriated public land of the United States, free and open to exploration and purchase by the citizens thereof, for the valuable mineral deposits therein contained.

V. That on said date, to wit: the-----day of-----, 19----, ----- plaintiff and-----, being citizens of the United States, entered upon said ground, herinafter particularly described, and known as the ----- Placer Mining Claim, and segregated the same from the public domain, by posting a notice of location thereon and by distinctly marking the boundaries thereof upon the ground, so that the same could be readily traced; and did immediately thereafter, to wit: on or about the-----day of-----, 19----, make a discovery of-----and-----and other valuable minerals and valuable mineral deposits within the exterior boundaries of said----- Placer Mining Claim, and did, thereafter, to wit: on the-----day of-----, 19----, cause to be recorded in the office of the County Recorder of said County of-----, which was and is the County within which said placer mining claim was and is situate, a true copy of said notice of location of said placer mining claim, giving the names of said locators, said plaintiff and his said associates as the locators thereof, the date of said location, the name of the claim, and such a description of such placer mining claim hereinbefore referred to, and hereinafter particularly described, with reference to natural objects and permanent monuments so that the same could be readily identified. Said property so located as aforesaid, being described as follows, to wit: the-----quarter of Section-----in Township-----of Range-----, ---M., containing one hundred and sixty acres of land.

VI. Plaintiff further alleges that said plaintiff and his said associates ever since the said date of the location of said placer mining claim, and now are, the owners of said placer mining claim and location, premises and property, and the whole thereof, as to all persons, save and except the United States of America; in the possession and entitled to the possession of every part of the same. That said plaintiff and his said associates have complied with every rule, regulation and custom, in force in said-----Mining District, and with the provisions of the mining laws of the State of-----and the Acts of Congress in that behalf enacted; and the defendant herein has no right, title or estate whatsoever in or to said placer mining claim or location, or in or to any part, portion or parcel thereof.

VII. Plaintiff further alleges that defendant herein asserts that it is and pretends to be the owner of all of said Section-----in Township----- of Range-----, -----M. hereinbefore described, under and by virtue of placer mining locations pretendedly made by it, or those under whom it claims, prior to the title of plaintiff, or his said associates, but which said pretended placer mining locations, and each thereof, so claimed by the defendant herein, or those under whom it claims, were pretendedly made by defendant at the time when the said Section-----and the whole thereof, had passed into private ownership, and the same, and no part thereof, was vacant or unappropriated public land, or free or open to exploration, or location, or purchase, as a part of the public domain, under the mining law of the United States, or otherwise.

VIII. That said assertion of title and pretension of ownership upon the part of the defendant herein, is wrongful and without right, and the alleged title of said defendant is fraudulent and void, the said defendant or those under whom it claims, never, at any time, having made or adopted a discovery of any valuable mineral within the boundaries of said section hereinbefore described, and known as and called by it, the-----Consolidated Placer Mining Claim, or within the boundaries of any part or portion, or parcel of ground claimed by it, within said Section, by whatsoever name by it called.

IX. That the defendant herein, or those under whom it claims, did not, prior to the said location of said plaintiff and his said associates, as hereinbefore aforesaid, or at any other time, mark the boundaries of said or any placer location, therein alleged to be embraced and included in and constituting a part of its said alleged, and pretended-----Consolidated Placer Mining Claim, upon the ground, so that the same could be readily traced, nor traced at all.

X. Plaintiff further alleges that the defendant herein, and those under whom it claims, in fraud of the rights of the citizens of the United States, and particularly in fraud of the rights of plaintiff and his said associates, have caused to be recorded in the office of the said County Recorder, pretended notices of location, describing said Section----in Township----of Range----, ---M., therein and thereby covering, including and overlapping the said placer mining claim and location of the plaintiff and his said associates in said-----quarter section-----; calling the alleged placer mining locations therein, the-----placer mining claim, pretendedly located upon and pretendedly including all of the northeast quarter of said Section-----; the-----placer mining claim pretendedly located upon and pretendedly including all of the southeast quarter of said Section-----; the-----placer mining claim pretendedly located upon and pretendedly including all of the northwest quarter of said Section-----; the-----placer mining claim pretendedly located upon and pretendedly including all of the southwest quarter of said section; each of said pretended locations pretendedly containing one hundred and sixty acres of land, and said four alleged locations of land pretendedly constituting the said alleged-----Consolidated Placer Mining Claim.

XI. That said notices of location, and each of them, is an assertion of rights claimed under and by virtue of fraudulent, void and fictitious mining locations falsely and fraudulently claimed to have been made by the defendant herein, or those under whom it claims.

XII. That the claims of the defendant herein are all, and each of them is, inferior and subordinate to the title of plaintiff and his said associates, which title, last aforesaid, arises by virtue of the valid location so made by said plaintiff and his said associates, as hereinbefore set forth, and defendant's claims and titles cast a cloud upon the possession and title of plaintiff, and his said associates, and prevent them from enjoying fully and peaceably the fruits of their said ownership.

* XIII. Plaintiff further alleges that the said alleged several placer mining claims, and locations, particularly mentioned in paragraph X

* In an action wherein the United States is not actually nor constructively a party it can not be shown that the claim is based upon a "dummy" location. *Riverside Co. v. Hardwick*, 16 N. M. 479, 120 Pac. 325. See, also, *Hall v. McKinnon*, 193 Fed. 572.

hereof, and each of them, is and at all times has been, a fraudulent and void location against the Government of the United States, plaintiffs, said associates and all other persons interested in the ground sought to be embraced therein or covered thereby. That at the time of the alleged location of each thereof, and at all times subsequently, there were not eight, nor any bona fide individual claimants as locators thereof, among the eight alleged locators of each of said alleged placer locations, and that one hundred and sixty acres of mineral land were so illegally and fraudulently included within each of said alleged placer mining claims or locations, to wit: said Placer Mining claim, said -----placer mining claim, said -----placer mining claim and said -----placer mining claim, by the defendant herein, or those under whom it claims, for the purpose of thereby surreptitiously acquiring and appropriating to their own use more mineral land in one location than they were entitled to under the mining law of the United States. That the names of ----- and ----- named and used as locators of said alleged placer mining claims and locations mentioned in paragraph X hereof, by said ----- and ----- were each and all dummies and sham locators and none of said six persons whose names were so used ever had or was intended by said ----- and ----- to have any estate, right, title, or interest whatsoever in said alleged placer mining claims or locations, or of, in, or to any one of them, nor were they, nor any of them, ever informed, or had any knowledge of the existence of said, or of any one of said pretended placer locations at the time of the said pretended location thereof, and said ----- and ----- did wrongfully and unlawfully conspire with each other at and prior to the date of the alleged location of each of said alleged and pretended placer claims and locations to wrongfully and fraudulently make and claim the said several alleged and pretended placer mining claims or locations and each of them, in the manner and way aforesaid, and said ----- and ----- by the use of said six sham and dummy locators and did attempt to make said pretended locations, and each of them, in pursuance of such conspiracy, and said defendant has, and now claims, the said 160 acres of mineral land in each of said several placer mining claims and locations in controversy herein and called by defendant herein the ----- Consolidated Placer Mining Claim, under and by virtue of the said false, fraudulent and illegal pretended several locations mentioned and described in paragraph X hereof.

XIV. Plaintiff further alleges that the defendant herein in pursuance of such conspiracy and to fully consummate the same, and wrongfully claiming to be the owner of said alleged and pretended placer mining claims, did heretofore, to wit: on or about the ----- day of -----, 19--, file or cause to be filed in the United States land office at ----- in the State of ----- its application for a patent from the Government of the United States of America, for said alleged and pretended ----- Consolidated Placer Mining Claim, and for the whole thereof, and therein described as embracing all of said Section ----- in Township ----- of Range -----, ----- M., containing about 640 acres of land.

XV. That in and by said application for patent, defendant herein wrongfully, falsely and fraudulently set up, alleged and claimed that it, said defendant, was and is the owner and in possession and entitled to the possession of the whole of the said alleged ----- Consolidated Placer Mining Claim, embracing all of said Section ----- and the said placer mining claim and location of plaintiff and his said associates.

XVI. That the said defendant has at all times since maintained and prosecuted and now does maintain and prosecute its said false, fraudulent and wrongful application for said patent, and thereby the title of the plaintiff and his said associates in and to said placer mining claim and location hereinbefore mentioned, as duly located by plaintiff and his said associates, is impeached, clouded and encumbered and the value of the estate and property of the plaintiff and his co-tenants therein are greatly depreciated to the great and irreparable damage of the plaintiff and his said associates.

XVII. Plaintiff further alleges that heretofore, to-wit: on the ----- day of -----, 19____, and within the 60 days' period of newspaper publication of the said defendant's notice of application for patent, plaintiff filed his adverse claim against the issuance of such patent to the said defendant for its said alleged and pretended ----- Consolidated Placer Mining Claim, as so applied for, with the Register of the United States Land Office aforesaid, that being the Land Office District in which the said alleged and pretended ----- Consolidated Placer Mining Claim is situate, said adverse claim showing the nature, boundaries and extent of said adverse claim; and plaintiff brings this suit within 30 days after the filing thereof, for the purpose of determining said adverse claim and the right of possession to the said placer mining claim so located as aforesaid by said plaintiff and his said associates.

Wherefore, the plaintiff prays the judgment of this court that said defendant ----- has no estate, interest, possession or right of possession in or to said alleged ----- Consolidated Placer Mining Claim in said ----- quarter of said Section ----- in Township ----- Range ----- M. and the said placer mining claim and location hereinbefore and in paragraph V hereof, particularly described, as the property and estate of the plaintiff and his said associates and the said mineral substances in said ----- quarter of said section ----- contained, or either, or any of them; and that the plaintiff be deemed to be the owner, subordinate to the rights of his said associates, and subject to the paramount title of the United States of America and lawfully in and entitled to the possession of the placer mining claim and location in said paragraph V particularly mentioned and described and of each and every the mineral deposits and mineral substances therein contained, and that the plaintiff's title thereto and to each and all thereof and to the possession thereof be quieted and confirmed as against said defendant and all persons claiming by, through or under it; and that said defendant has not, and never has had, any estate, possession, right of possession, title or interest whatsoever of, in or to said ----- quarter of said Section ----- in Township ----- of Range ----- M., or any part or portion thereof, and that said defendant be forever barred from

asserting or claiming any estate, right, interest or right of possession therein, or to any part or parcel thereof, or to any mining claim or location therein; and that plaintiff may have such other and further relief as the nature of his case may require and as shall seem meet.

Attorney for plaintiff.

FORM No. 41

COMPLAINT IN EJECTMENT

(Precedent in *Glacier Co. v. Willis*, 130 U. S. 471)

(Title of court and cause.)

The plaintiff complains and alleges that it is a corporation organized and existing under the laws of the State of -----, and is a citizen of the State of -----, that the defendants are, and each of them is a citizen of the State of -----, and a resident of ----- in the County of ----- and State last aforesaid and that the property in controversy exceeds the value of three thousand dollars.

The plaintiff further alleges that on the ----- day of -----, 19____, one ----- and one -----, each being a citizen of the United States, went upon the public domain of the United States, theretofore wholly unoccupied and unclaimed, and located on said day a tunnel and tunnel site at the base of ----- Mountain, in ----- Mining District, County of -----, State of -----.

That afterwards, and on the same day, they marked the boundaries of their said location and commenced to run a tunnel into said ----- Mountain, and, after complying with the laws of the United States and the laws of the State of -----, and the local rules and regulations of said ----- Mining District, they caused to be made out and recorded in the Recorder's office of the County of ----- aforesaid, a location certificate of said tunnel claim, which said certificate described the location and boundaries of said tunnel claim.

That from the day of said location until the ouster hereinafter set forth the said locators of said tunnel claim, and their grantees remained continuously in possession of the said tunnel claim, and have expended thereon more than the sum of ----- dollars.

That plaintiff is the owner of said tunnel claim above described by location and purchase, and is now entitled to the quiet and peaceful and exclusive possession thereof by virtue of a full compliance on its part, and on the part of its grantors, with the laws, rules and customs above set forth.

That the plaintiff, and its grantors have been in the peaceful and undisputed possession of said tunnel claim by virtue of said location, occupation, preemption and record for more than ----- years prior to the ouster hereinafter complained of.

That plaintiff and its grantors, for more than ----- consecutive years prior to the acts of the defendants, hereinafter mentioned, paid all the taxes, legally or otherwise assessed upon said tunnel claim, and have worked and mined the same from said ----- day of -----, 19____, up to the time of the acts of the said defendants hereinafter set forth.

That said tunnel claim, so located, embraces ----- valuable lodes or veins which have been discovered, worked and mined by the plaintiff and its grantors.

That said tunnel claim was, by its locators, named the ----- tunnel claim, and is described more fully as follows:

(Description)

Plaintiff further alleges that while it was in the quiet and peaceable possession of said tunnel claim, and every part thereof, the defendants wrongfully, and without right, and against the will and without the consent of the plaintiff, to wit: on or about the ----- day of -----, 19--, entered upon the premises, and into said tunnel, so run by plaintiff and its grantors on said claim, and wrongfully and unlawfully ousted the plaintiff therefrom; claiming said tunnel as the ----- (claim).

That on or about said last mentioned date the defendants, without right, made a pretended location of a lode claim across said tunnel and within said tunnel claim, and therein wrongfully ousted the plaintiff therefrom, claiming that they had discovered a lode, which they called the ----- lode.

That the defendants ever since hitherto unlawfully and wrongfully withheld the possession of the said premises and tunnel claim from the plaintiff to its damage in the sum of ----- dollars.

Wherefore, plaintiff demands judgment against the defendants.

1. For the recovery of the possession of said ----- tunnel, tunnel-site and claim.

2. For the sum of ----- dollars, damages for the wrongful withholding thereof.

3. For costs of suit.

Attorney for plaintiff.

FORM No. 42

COMPLAINT—UNDERGROUND TRESPASS

(Title of court and cause.)

Comes now the plaintiff in the above entitled action and complains of the defendant herein, and for cause of action alleges:

1. That the defendant, the said ----- Mining Company is, and was at all the times hereinafter mentioned, a corporation organized and existing under the laws of the State of -----, having its principal place of business at ----- in said state and engaged in the business of mining at ----- Mining District, in the County of ----- and state aforesaid.

2. That on the ----- day of -----, 19--, plaintiff was and ever since has been, and now is, the owner and possessed and entitled to the possession of that certain parcel of mining ground situate and being in the ----- Mining District in the County of -----, and State of -----, consisting of those two certain contiguous and adjoining pieces of mining ground, the one known as ----- Mining Claim and also known as ----- Lode Claim and in the system of United States surveys for patents for mineral

lands from the Government of the United States designated as Survey No. _____, and also so designated in a certificate of purchase therefor from the United States of America, which was issued on the _____ day of _____, 19____, to the plaintiff by the Receiver of the United States land office at _____, in the State of _____, and the other known as _____ Mining Claim, and described as follows, to-wit:

(Description)

together with all the veins, lodes, ledges, dips, deposits and bodies of ore, rock and earth bearing_____and_____and other precious metals.

3. That said mining claim and ground lastly hereinbefore mentioned adjoins said_____Mining Claim or ground on the_____ and that said two lode claims have been worked by plaintiff since about _____, and form and constitute but one parcel of mining ground and one property.

4. That said mining ground contains valuable mineral deposits, lodes, ledges, dips, deposits and veins, rock and earth bearing_____and _____and other precious metals; and the said mineral deposits, lodes, ledges, dips, deposits and veins constitute the sole value of said mining ground.

5. That plaintiff was at all the times hereinafter mentioned, and now is engaged in mining and developing the said mining ground, lands and premises, and extracting therefrom the said ores and minerals; and constructed at great expense, and has and had thereon mines, drifts, cuts, excavations and other works necessary for and adapted to the work of mining and developing the said mining ground.

6. That heretofore, and on or about the_____day of_____ 19____, the said defendant, said_____Mining Company, by itself and its agents, servants and employees, forcibly and wilfully, against the will and without the consent of the plaintiff entered into and upon the said mining ground hereinbefore described, and commenced to, and then and thereafter, for the purpose of mining the said ground and extracting the ores therefrom, cut, made and excavated certain drifts and openings into and under and upon the said mining ground, and invaded the drifts, excavations and mines made thereon by the plaintiff, and ever since last mentioned date has intruded and trespassed upon the said mining ground, drifts, excavations and mines of the plaintiff, and has dug up and extracted, taken out of and removed from said mining ground and converted to its own use large quantities of the mineral deposits, earth and ores bearing_____and_____other precious metals and the mineral deposits therein of the value of_____dollars, and upwards, and will thereby take from the said mining ground the entire value thereof, to the great and irreparable injury of the plaintiff.

7. That unless the said defendant, its agents, servants and employees are restrained and enjoined from intruding and trespassing upon the said mining ground, and making cuts, openings and excavations therein and digging up, extracting, removing and carrying away from said mining ground said mineral deposits, rock, ores, and earth bearing_____and_____and other precious metals, in the value

and substance of said mining ground will be destroyed, and this plaintiff will suffer irreparable injury.

Wherefore, plaintiff prays that this honorable court grant to him a writ of injunction *pendente lite* issuing out of and in accordance with the rules and practice of this honorable court to be directed to the said defendant-----Mining Company, to restrain it, and its agents, servants, employees and confederates, from entering into or upon the mine, or mines, mining ground, lode, dips, drifts, cuts, excavations or works, or upon any part of the land, property and premises hereinbefore particularly described, and from working or mining thereon, or making or continuing any cut, opening or excavation on or in said mining ground, or upon or in any part thereof, or digging up, extracting, or removing from said mining ground, or any part thereof, any mineral, mineral deposit, ore, rock or earth, or any mineral substance whatever, whether the same be in place, or heretofore severed from the freehold, and from in any manner hindering or obstructing plaintiff, or his agents, servants or employees, or any, or either of them, in working or mining upon said premises, and from in any manner interfering with the said premises, or with anything thereon; as, also, a restraining order to the same effect until an application for such an injunction can be heard, and that at the final hearing such injunction may be made perpetual and that an account be taken of the waste committed, and for such other and further relief as to this court may seem just and meet.

Attorney for plaintiff.

FORM No. 43

COMPLAINT—QUIETING TITLE *

(Precedent in *Thompson v. Spray*, 14 Pac. 182.)

(Title of court and cause.)

Comes now the above named plaintiffs, and by their attorneys -----, and for cause of action allege that on the-----day of-----, by an order of-----court of said-----county duly made on that day, and before the filing of this complaint, the said-----was appointed guardian, *ad litem* for-----, a minor. That the plaintiffs now are, and for a long time hitherto have been, the owners of, in the possession of, and entitled to the possession of, that certain mining claim known as-----mining claim and situate, lying and being in the County of-----, State of-----, and bounded and particularly described as follows, to wit:

(Description)

That said defendant claims an estate and interest in the above described premises adverse to said plaintiffs; that the said claim of defendant is without any right whatsoever, and that the said defendant has not any estate, right, title or interest whatsoever in the said mining claim, land or premises, nor any part thereof.

Wherefore, plaintiffs pray for judgment: (1) that defendant may be required to set forth the virtue of his claim, and that all adverse

* For form of complaint in suit to quiet title and for an injunction and restraining order, see *Rose's Fed. Proc. Equity Form* No. 465.

claims of the defendant may determined by a decree of this court; (2) that, by said decree, it be adjudged that the defendant has no estate or interest whatsoever in or to said land, mining claim and in this complaint described, and that the right, title and interest of plaintiffs therein to said land and mining claim is good and valid; (3) that the defendant be forever enjoined and debarred from asserting any claim whatsoever in or to said premises and property, or any part thereof, adverse to the plaintiff, and for such other and further relief as to this court may seem meet and proper, and for costs of suit herein.

Attorney for plaintiff.

FORM No. 44

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For precedents see

- Iron Co. v. Campbell, 135 U. S. 286 (known lode within placer claim).
- Haws v. Victoria Co., 160 U. S. 303 (discovery—boundaries—trespass).
- Gutierrez v. Albuquerque Co., 188 U. S. 547 (eminent domain—canals—reservoirs).
- Williams v. U. S., 104 Fed. 50 (eminent domain).
- Cascaden v. Dunbar, 191 Fed. 172 (tenancy in common).
- Morenhaut v. Wilson, 52 Cal. 264 (abandonment—absence of intent).
- Dwinnell v. Dyer, 145 Cal. 14, 78 Pac. 247 (conflicting locations).
- Harris v. Lloyd, 11 Mont. 390, 28 Pac. 737 (mining partnership—rights of co-owners).
- Lockhart v. Washington Co., 16 N. M. 246, 117 Pac. 883 (fraud).
- New England Co. v. Broyles, 87 Okla. 55, 209 Pac. 312 (implied obligation to develop oil well—cancellation of lease).
- Plummer v. McLain, --- Tex. C. A. ---, 192 SW 571 (misdescription of claim in patent).
- Harrington v. Chambers, 3 Utah 94, 1 Pac. 362 (conflicting claims—assessment work outside of location).
- Eilers v. Boatman, 3 Utah 159, 2 Pac. 66 (lack of monuments—overlapping locations).
- Springer v. S. P. Co., --- Utah ---, 248 Pac. 620 (trespass).
- Yarwood v. Johnson, 29 Wash. 643, 70 Pac. 123 (forfeiture—fraudulent relocation by cotenant).

FORM No. 45

INSTRUCTIONS TO JURIES

For precedents see

- Flagstaff Co. v. Tarbet, 98 U. S. 463 (crosswise location).
- Argentine Co. v. Terrible Co., 122 U. S. 478 (discovery).
- Larkin v. Upton, 144 U. S. 19 (broad lode).
- Cheesman v. Shreeve, 40 Fed. 787 (location).
- Cheesman v. Hart, 42 Fed. 98 (parallelism of boundary lines).
- Meydenbauer v. Stevens, 78 Fed. 787 (location—rights of locator).

Walton v. Wild Goose Co., 123 Fed. 209 (location—excessive location of placer claim—assessment work).
 Charlton v. Kelly, 156 Fed. 433 (discovery).
 Rush v. French, 1 Ariz. 99, 25 Pac. 819 (location, nonresidents—
 forfeiture—ejectment).
 Big Three Co. v. Hamilton, 157 Cal. 130, 107 Pac. 301 (assessment work—
 forfeiture).
 Willeford v. Bell, 5 Cal. Unrep. 679, 49 Pac. 6 (sufficiency of marking).
 Southern Nevada Co. v. Holmes, 27 Nev. 107, 73 Pac. 759 (apex suit).

Special Issues

Bulwer Co. v. Standard Con. Co., 83 Cal. 589, 23 Pac. 1109 (special issues submitted to jury).

FORM No. 46

ORDER TO SHOW CAUSE AND RESTRAINING ORDER

(Underground Trespass)

(Title of court and cause.)

Upon reading and filing the complaint herein (with the affidavit of -----, in support thereof), and on motion of-----, Esq., attorney for the plaintiff.

It is ordered

that the defendant, ----- Mining Company show cause, if any it has, before the above entitled court, at the court-house thereof, in the City of -----, in the County of -----, and State of -----, on the ----- day of -----, 19----, at ---- o'clock, in the forenoon of that day, or as soon thereafter as counsel can be heard, why an injunction *pendente lite* should not issue, restraining and enjoining said defendant, ----- Mining Company, its agents, servants and employees and confederates from entering into or upon the mining ground situate and being in the ----- Mining District, County of -----, and State of -----, consisting of those two certain contiguous and adjoining premises or mining ground, the one known as the ----- mining claim and also known as ----- lode claim and in the system of United States Surveys for patents for mineral lands from the government of the United States designated as Survey No. -----, and also so designated in a certificate of purchase from the United States of America, which was issued on the ----- day of -----, 19----, to the plaintiff by the receiver of the United States land office at -----, in the State of -----, and the other described as follows, to wit:

(Description)

and from entering into or upon the mine or mines, lodes, drifts, cuts, excavations or works, or any thereof, on said mining ground or into or upon any part of said ground, and from working, or mining, or making or continuing any cut, opening or excavation on, or in said mining ground, or on or in any part thereof, or digging up, extracting,

taking or removing from said mining ground, or any part thereof, any mineral, mineral deposit, ore, rock or earth, or any mineral substance whatever, whether the same be in place, or severed from the freehold; and from in any manner hindering or obstructing plaintiff, or his agents, servants or employees, or any, or either of them, in working and mining upon said premises, and from in any manner interfering with said premises, or with anything thereon; such cause to be shown on said complaint (and on the affidavit of -----, thereto annexed) and to be herewith served.

And it is further hereby ordered that in the meantime, and until the hearing upon the foregoing order to show cause and the further order of this court, the said defendant ----- Mining Company, its agents, servants and employees, and each and every of them, be, and they are hereby enjoined and restrained and ordered to refrain and desist from entering into or upon the said mining ground, or any part thereof, in the foregoing order to show cause mentioned and designated; and from entering into, or upon, the mine or mines, lodes, dips, cuts, excavations, or works, or any part thereof, on said mining ground; and from working or mining, or making, or continuing any cut, opening, or excavation on, or in said mining ground; or digging up, or extracting, taking or removing from said mining ground, or any part thereof, any mineral, mineral deposit, ore, rock or earth, or any mineral substance whatever, whether the same be in place or severed from the freehold; and from in any manner hindering or obstructing plaintiff, or his agents, servants, or employees, or any, or either of them, in working and mining upon said premises, and from in any manner interfering with said premises, or with anything thereon, upon the said plaintiff giving bond in the sum of ----- dollars.

And it is further hereby ordered that any and all affidavits, depositions and documents to be used by defendant on the hearing of said order to show cause shall be served, by copy, on the attorney for the plaintiff at least ----- days before the hearing of said order.

Judge.

Dated -----, 19-----.

FORM No. 47

ORDER FOR SURVEY, ETC.—UNDERGROUND TRESPASS

(Precedent in *St. Louis Co. v. Montana Co.*, 9 Mont. 288, 23 Pac. 510; *State v. Anaconda Co.*, 26 Mont. 396, 68 Pac. 570)

(Title of court and cause.)

This matter coming on to be heard upon the petition for an order for survey, examination, and inspection of all of the shafts and underground workings in the ----- and ----- lode claims, or connected therewith, and an order to show cause having heretofore been issued and duly served upon said ----- Mining Company; and said defendant appearing by counsel; and said petition having been duly heard and considered upon the return of said order to show cause upon evidence introduced by both parties, the court finds that it is necessary that the petitioner have a survey and inspection.

It is therefore ordered that you, the said _____ Mining Company, give to _____ the petitioner herein, a survey, examination and inspection of all of the shafts and underground workings contained within the _____ and _____ lode claims, situate in _____ Mining District, County of _____, State of _____, and of all the underground workings connected therewith and extending into the _____, and _____ lode claims.

It is further ordered that _____ the petitioner herein make such survey, examination and inspection commencing on the _____ day of _____, 19____, and that you, the said _____ Mining Company, at all the times during the said period, upon the demand of said _____ lower and hoist him through said shaft and permit him to enter said underground workings; that you remove all bulk-heads and obstructions which may be necessary to have removed to permit such survey, examination and inspection.

That said work of survey, examination and inspection shall be completed within _____ days from the date of this order unless, for good cause, the court shall order a longer time to be used.

Said _____ petitioner herein shall be responsible for all damage done in making said survey, examination and inspection.

The survey, examination and inspection by the said _____ shall be confined within the vertical planes of the end lines of _____ and _____ lode claims, except so far as it may be necessary to run lines in underground workings outside of such planes in order to complete an accurate survey of said workings within the said end lines. Such survey to be conducted so far as possible without interference with the regular and orderly working and operation of the said _____ and _____ lode claims, or the employees of said _____ Mining Company in the discharge of their various duties; and the engineers of the said _____ shall not dispose of, nor sell to any one any plan or section of said _____ and _____ lode claims; or any matter or data obtained or resulting from such survey, except to _____, its agents and attorneys. The surveyors of said _____ are not to enter said _____ and _____ lode claims unless accompanied by three representatives, appointed by said _____ Mining Company, to accompany them, unless, after reasonable notice, not to exceed _____ such persons shall fail to attend. The persons so hereinbefore authorized to make such survey shall not take nor remove from said _____ and _____ lode claims any samples of ore or minerals at any point therein, but they shall be allowed to examine and trace the walls of the vein or fissure; and for this purpose they shall be allowed to use the pick and remove each material as shall enable them to make such survey, examination and inspection. A copy of this order shall be sufficient notice to said _____ Mining Company, its agents, servants, officers and employees of the right of said _____ and the persons named in this order to make such survey, examination and inspection, and to enter the premises herein described for such purpose.

Judge.

Done in open court this _____ day of _____, 19____.

FORM No. 48

PETITION FOR SURVEY, ETC.—UNDERGROUND TRESPASS

(Precedent in State v. Anaconda Copper Co., 26 Mont. 396,
68 Pac. 570)

(Title of court and cause.)

Comes now-----and respectfully alleges and shows to the court: That he is now, and for a long time prior hereto has been the Lessee from the Owners of an undivided-----of the-----lode mining claim, situated in the-----Mining District, County of-----, State of-----, and lying adjacent to the-----and-----lode claims on the-----and entitled to become the purchaser of said portion of said lode claim under and by virtue of an agreement from the owners thereof. That the-----Mining Company is in the possession of the-----and-----lode claims, and of all the shafts and underground working therein.

That, as petitioner is informed and believes, certain underground workings have been made by said-----Mining Company into the said-----lode claim. That there are certain veins or orebodies which have their tops or apices in the said lode claim but so far depart from a perpendicular in their downward course as to pass into the-----and-----lode claims beneath the surface thereof, and that as petitioner is informed and believes said-----Mining Company has been and is now engaged in extracting valuable ores from said-----lode claims and the veins and ores belonging thereto, and that certain of the underground workings made in and extending from the-----and-----lode claims are upon the veins and orebodies which belong to said-----lode claim.

That the only means of access to said underground workings is through the shafts in said-----and-----lode claims in the possession of said-----Mining Company and the underground workings in said claims and extending therefrom. That it is necessary for your petitioner to have a survey, examination and inspection of all of the shafts and underground workings in said-----and-----lode claims and the underground workings extending therefrom or connected therewith, in order to ascertain, protect, and enforce his rights to the-----lode claim, and to the veins and orebodies belonging thereto.

That on the-----day of-----your petitioner served upon said-----Mining Company a demand and request in writing of which Exhibit "A" hereto attached and hereof made a part, is a copy, but that said-----Mining Company has failed and refused for more than-----days since the service of said demand and request upon it to grant the same or to permit your petitioner to have the survey, examination and inspection therein, as requested.

That as your petitioner is informed and believes it will be necessary for him to have access to said shafts and underground workings in said-----and-----lode claims by at least-----persons, for a period of-----days, in order to make a proper and thorough survey, examination and inspection of the same.

Wherefore, your petitioner prays an order of the court, or the judge thereof, requiring the said-----Mining Company to appear and show cause why an order for survey, examination and inspection of said-----and-----lode claims, and of all the shafts and underground workings therein contained, should not be granted to him in accordance with the allegations of this petition.

Petitioners.

Attorney for Petitioner.

FORM No. 49

VERDICT—ADVERSE SUIT †

(Precedent in Bennett v. Harkrader, 158 U. S. 441)

(Title of court and cause.)

We, the jury find for the-----

Foreman.

FORM No. 50

NOTICE OF LODE LOCATION *

TO ALL WHOM IT MAY CONCERN:

This mining claim, the name of which is the-----Mining Claim, is and was located by the undersigned, on the-----day of-----19-----.

The length of this claim is-----feet, and-----claim-----feet in a-----direction and-----feet in a-----direction from the center of the discovery-----, at which this notice is posted, lengthwise of the claim, together with-----feet in width on each side of the center of said claim. The general course of the lode is from the-----to the-----

The claim is situated in-----Mining District, County of-----, State of-----, about-----in a-----direction from-----

The surface boundaries of this claim are marked upon the ground as follows: Beginning at-----

at a point in a-----direction-----feet from the discovery shaft (at which this notice is posted), being in the center of the-----end line of said claim; thence

† See Doe v. Waterloo Co., 70 Fed. 456, and compare McGinnis v. Egbert, 8 Colo. 41, 5 Pac. 652. Manning v. Strehlow, 11 Colo. 451, 18 Pac. 625.

* For another form of location notice see Hammer v. Garfield, 130 U. S. 291.

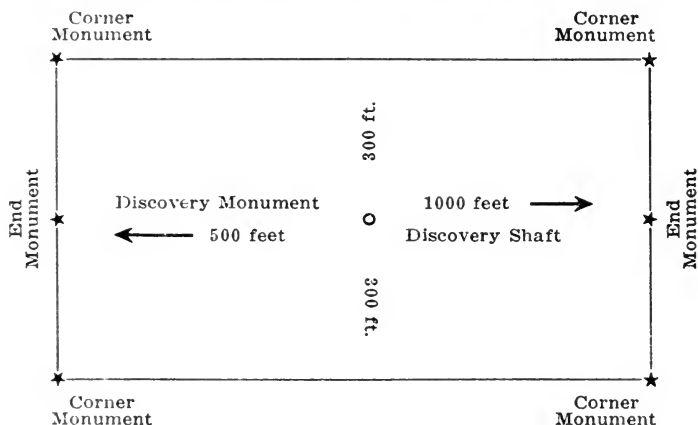
In California the boundary marks must be a post not less than four inches in diameter, or a stone monument at least eighteen inches high. See Appendix A.

NOTE.—All notices of location, or of forfeiture, or of annual expenditure substantially must conform to the law of the state or the local rules of the mining district within which the claim is situated.

----- feet to a -----
 being the ----- corner of said claim; thence -----
 feet to a ----- being at the ----- corner of said
 claim thence ----- feet to a ----- at the center
 of the ----- end of said claim; thence ----- feet
 to a ----- being at the ----- corner of said claim;
 thence ----- feet to a ----- at the corner of
 said claim; thence ----- feet to the place of beginning.

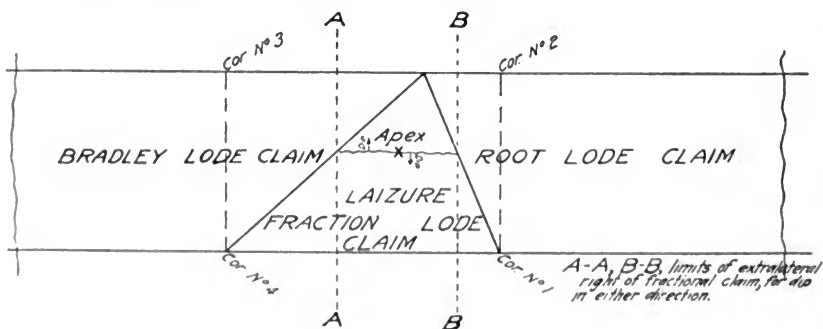
 Locators.

This diagram is intended to give a general idea of plan of location.



Fractional Lode Location

Under the authority of the case of *Jim Butler Co. v. West End Co.*, 247 U. S. 454, a fractional location may be perfected by placing its location monuments upon adjoining territory, as suggested in the hypothetical case illustrated by the following diagram, and the extra-lateral right, if any, thus secured in consonance with the dip. See, also, *Del Monte Co. v. Last Chance Co.*, 171 U. S. 55.; but see *Champion Co. v. Con. Wyoming Co.*, 75 Cal. 78, 16 Pac. 513.



FORM No. 51

AMENDED NOTICE OF LODE LOCATION *

I make this amended location of the _____ lode claim, claiming by right of discovery, location, primal appropriation, and possession _____ feet, linear, on this vein or lode _____, the same being _____ feet along the said vein or lode in a _____ direction from the discovery stake and _____ feet along the said vein or lode in a _____ direction therefrom, together with _____ feet in width on each side of the center at the surface of said vein or lode.

Situate in _____ Mining District, County of _____, State of _____, and more particularly described as follows, to wit:

(Description)

This amended location is made in conformity with the original location, made _____, 19____, recorded _____, 19____, in Book _____, page _____, of _____, in the office of the Recorder of said county, and it is made for the purpose of more definitely describing the boundaries of said lode claim, correcting any irregularities, informalities or errors, supplying omissions and correcting any defects which may have existed or do exist in the original location, or the record thereof, hereby waiving no rights acquired under and by virtue of said original location. And if the original location is void, then this amended location shall be an original location, and this amended location notice an original notice of location

Date of Original Discovery _____, 19____.

Date of Amended Location _____, 19____.

Locator.

FORM No. 52

NOTICE OF MILL-SITE LOCATION

(330 feet by 600 feet equals 5 acres)

Notice is hereby given that the undersigned, proprietor of that certain vein or lode claim known as the _____ mining claim (or the owner of that certain quartz mill or reduction works known as the _____) has this day located five (5) acres of non-mineral land to be known as the _____ mill-site, situated in the _____ Mining District, County of _____, and State of _____, and described as follows:

Beginning at the northeast corner of said mill-site, a post marked N.E. cor. No. 1, which corner is about _____ feet in a _____ direction from the corner of the _____ mining claim, U. S. survey No. _____, thence west _____ feet to a post marked N.W. cor No. 2; thence south _____ feet to a post marked S.W. cor.

* For another form of amended location see Porter v. North Star Co., 133 Fed. 756.

No. 3, thence east _____ feet to a post marked S.E. cor. No. 4; thence north _____ feet to the place of beginning.

Dated _____, 19____.

Locator.

FORM No. 53

NOTICE OF PLACER LOCATION

(Precedent in *Kern Oil Co. v. Crawford*, 143 Cal. 298, 76 Pac. 1111.)

Placer Location (on surveyed land).

Notice is hereby given that the undersigned has this _____ day of _____, 19____, located a placer mining claim situated in _____ Mining District, County of _____, State of _____, described as follows: the _____ of Section _____, in Township _____, Range _____ M., containing _____ acres.

This claim shall be known as the _____ placer mining claim.

Locator.

FORM No. 54

NOTICE OF TUNNEL SITE LOCATION *

Notice is hereby given that I, the undersigned, have this _____ day of _____, 19____, located a tunnel right, the name of which shall be and is _____ Tunnel Claim, for the purpose of discovering mines on the line thereof. Said tunnel right or location is situate in _____ Mining District, County of _____, State of _____, and is described as follows: Commencing at the face or point of commencement of said tunnel, at which this notice of location is posted, and running thence three thousand feet in a _____ direction, to a post marked _____, and _____ feet wide on each side of the center line of said tunnel. The boundary lines of said tunnel are marked by stakes (*or monuments*) placed along said lines at an interval of not more than (*six*) hundred feet from the face or commencement of said tunnel to the terminus of three thousand feet therefrom, and respectively marked _____. Said tunnel shall be _____ feet in width and _____ feet high in

* Mr. Shamel, in his work on Mining Law, says: "The question as to the width of the tunnel claim on each side of the center line thereof is much in doubt from the conflicting decisions, and it is deemed safest to establish the lines of the claim seven hundred and fifty feet distant from the center line, on either side thereof, and to make the notice accordingly. It has, however, been held that the claim may be fifteen hundred feet in width on either side of the center line—thus practically making the entire claim three thousand feet square—and from this it would follow that upon discovery of a lode within the tunnel, the location might be made in such a way as to give fifteen hundred feet from the point of discovery in *either direction* (though not in both directions). The writer doubts the correctness of this position. * * * The form may be varied as desired in this particular. *G. D. F. See Ellet v. Campbell*, 33 Pac. 521 (*aff'd.* in 167 U. S. 116; *Enterprise Co. v. Rico-Aspen Co.*, 66 Fed. 200" (*aff'd.* in 167 U. S. 108) (page 331). In *Morrison's Mining Rights* (15th ed.) it is said: "It is safer for the tunnel claimant to elect at the outset to take seven hundred and fifty feet on each side, or some other definite number of feet on each side, of the bore of his proposed tunnel." (Page 312.) See also, *Costigan Min. Law*, page 232, and *Min. Regs.*, pars. 16, 17, 18.

the clear. This tunnel claim is located about _____ from
 _____ (State courses and distances to some natural object
 or permanent monument as shall identify the claim or tunnel right.)

 Locator.

State of _____ }
 County of _____ } ss.

_____, being first duly sworn according to law, deposes
 and says, that he is the locator of _____ Tunnel Claim. That it is
 his *bona fide* intention to prosecute work on said tunnel with reasonable
 diligence for the discovery of mines and the development of the same.
 That he has commenced such tunnel at the face or commencement of
 said tunnel as described in the foregoing notice of location and has
 driven said tunnel a distance of _____ therefrom, at an expense
 of _____ dollars.

Subscribed and sworn to before me, this _____ day of _____, 19____.

 Notary Public

In and for the County

of _____,

State of _____.

My commission expires _____.

FORM No. 55

ADVERSE CLAIM

In the United States Land Office at _____, State of _____.

In the matter of the application of _____ Mining Company, a
 corporation, for a patent for the _____ mining claim situate in
 _____ Mining District, County of _____, State of _____,
 Section _____, Township No. _____, Range No. _____,
 Meridian.

State of _____ }
 County of _____ } ss.

To the Register of the United States Land Office at _____,
 State of _____:

_____, being first duly sworn, according to law,
 deposes and says that he is a citizen of the United States, born in the
 State of _____, and residing at _____, in the County of
 _____, and State of _____.

Deponent further says that in virtue of a compliance on his part
 and that of his grantors with the laws of the United States relating to
 taking up, locating and holding mining claims or mineral lands in the
 public domain and with the laws of the State of _____, and with
 the local laws, customs and usages of the _____ Mining District,
 deponent has become, and now is, the owner, in possession of and
 entitled to own and possess _____ linear feet on the _____
 vein, lode or ledge of quartz and other rock in place, bearing _____

and _____, together with certain surface ground appurtenant thereto for the convenient use thereof in working said vein, lode or ledge; said claim embracing in all _____ acres in superficial area, situate, lying and being in the _____ Mining District, County of _____, State of _____.

Deponent further says that the facts relative to his claim, right and title of possession to said vein, lode or ledge and mining ground, claim and premises are substantially as follows: That on and before the day of the location thereof, hereinafter mentioned, the said _____ vein, lode or ledge and mining premises were mineral lands of the public domain and entirely vacant and unoccupied and were not owned, held or claimed by any person or party as mining ground, or otherwise, and that while the same were so vacant, unoccupied and unclaimed, to wit: On the _____ day of _____, 19____, _____ and _____, each of them being citizens of the United States, entered upon and explored the premises, discovered and located the said _____ vein, lode or ledge and occupied the same as a mining claim.

That the said premises so located and appropriated consist of _____ feet in a _____ direction on and along the said vein, lode or ledge from the location stake and _____ feet in width, as will more fully appear by reference to the notice of location, a duly certified copy whereof is hereunto annexed, marked Exhibit "A," and made a part hereof. That the said locators upon the making of said location entered into and took possession of said vein, lode or ledge, mining ground, claim and premises, erected thereon such stakes and monuments as were necessary to point and designate the boundaries and extent thereof, did such work thereon and performed all such acts as were required by the mining laws of Congress, and of the State of _____ and by the laws, customs, rules and regulations of the miners of the said _____ Mining District, in which said claim is situated and filed their said notice of location in the office of the County Recorder of said County of _____, by whom the same was recorded on the _____ day of _____, at page _____ of Book _____ of _____ of the Records of said county.

That said locators remained in the possession, occupation and enjoyment of the said vein, lode or ledge, mining claim, ground and premises and continued from the date of said location to work upon, prospect and develop the same until the _____ day of _____, 19____, on which date the said locators, owners, and possessors of said vein, lode or ledge, and said mining ground, claim and premises, by their deed in writing, good and sufficient in the law, conveyed all of said _____ vein, lode or ledge, mining ground, claim and premises, so as aforesaid located by them, to _____, who thereupon entered into, took possession and control, and has since possessed, controlled, enjoyed and occupied all of said _____ vein, lode or ledge, mining ground, claim and premises. That the said locators and said _____, their said grantee and the adverse claimant herein did comply with every rule, regulation and custom in force in the said _____ Mining District, and with the provisions of the mining laws of the State of _____, and of the Acts of Congress in that behalf enacted.

That there is a _____ vein, lode or ledge with _____ wall within said mining ground, claim and premises of an average width of _____,

running in a-----and-----direction, containing-----vein
matter carrying-----; and there is blocked out, or in sight-----
tons of ore therein.

That there has been a large amount of money expended on said
-----vein, lode or ledge and said mining ground claim and premises
by said-----, the adverse claimant herein, and his grantor
and predecessors in interest aforesaid, to wit:-----dollars, in
-----, and there has been extracted from said vein, lode or ledge
and said mining ground, claim and premises, more than-----tons
of ore of the value of-----dollars. That by reason of the facts
aforesaid deponent has become and now is the rightful owner (except
as against the paramount title of the United States), and the lawful
possessor of the said vein, lode or ledge and the said mining ground,
claim and premises.

That the abstract of title, herewith presented and made a part
hereof, shows the deed, conveyance and transfer, whereby deponent
became, and is vested with all the right, title and interest of the said
locators in and to the said vein, lode or ledge, and said mining ground
and premises, so located as aforesaid.

Deponent further says that the pretended mining claim of said
applicant for patent known as the-----mining claim, overlaps,
embraces and includes a part and portion of deponent's said vein, lode
or ledge, mining ground, claim and premises.

That the relative position of said several mining claims and the
boundaries and extent of said overlap, at the surface, are more par-
ticularly set forth, mentioned and specifically described by courses and
distances in the plat hereto attached, marked Exhibit "B," and made
a part hereof.

Wherefore, deponent does dispute and contest the right of said
applicant for a patent from the government of the United States for
said pretended-----mining claim, and respectfully asks that all fur-
ther proceedings in the matter of said application be stayed in said
land office until the controversy shall have been settled by a court of
competent jurisdiction.

Subscribed and sworn to before me, this-----day of-----, 19---

Notary Public.

In and for the County of-----, State of-----.

My commission expires-----.

FORM No. 56

AFFIDAVIT OF CITIZENSHIP *

State of----- }
County of----- } ss.

----- being first duly sworn according to
law, deposes and says; that he is the applicant for patent for the
-----mining claim Serial No.-----situate

* In case an applicant has declared his intention to become a citizen or has been
naturalized, his affidavit must show the date, place, and the court before which he
declared his intention, or from which his certificate of citizenship issued, and present
residence. Min. Regs., par. 68. See, also, § 1077, n. 26.

in _____ Mining District, County of _____
 _____ and State of _____. That
 he is a native born citizen of the United States of America. That he
 was born at _____ in the County of _____
 State of _____, and that he now is and for more
 than _____ years last past has been a resident of _____,
 in the County of _____, State of _____.

Subscribed and sworn to before me, this _____ day of _____, 19____.

Notary Public.

In and for the County of _____, State of _____.

My commission expires _____.

FORM No. 57

AFFIDAVIT OF CHARGES AND FEES

(Caption as in Form No. 55.)

State of _____ }
 County of _____ } ss.

_____, being first duly sworn according to
 law, deposes and says, that he is the attorney in fact for the _____
 Mining Company, the applicant for patent for the _____ mining
 claim, designated as Serial No. _____. That said applicant has paid
 the following charges and fees for publication, and surveys and fees
 and money to the Register of the Land Office, viz:

To the Public Survey Office _____, \$ _____
 To the U. S. Mineral Surveyor for making the survey _____, \$ _____
 To _____ for publication of notice _____, \$ _____
 To the Register for filing application _____, \$ _____
 To the Register for the land embraced in the claim _____, \$ _____

Subscribed and sworn to before me, this _____ day of _____, 19____.

Notary Public.

In and for the County of _____, State of _____.

My commission expires _____.

FORM No. 58

AFFIDAVIT THAT NO KNOWN VEIN EXISTS WITHIN PLACER LOCATION

(Caption as in Form No. 55.)

State of _____ }
 County of _____ } ss.

_____ and _____, of the said County and State, being first
 duly sworn, each for himself, and not one for the other, deposes and
 says: That he is well acquainted with the _____ Mining Claim,
 embracing _____ acres, situated in the _____ Mining Dis-
 trict, County of _____ and State of _____, owned and
 worked by _____, the applicant for a United States patent
 therefor.

That for many years he has resided near, and often been upon said mining premises, and that no known vein or veins of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper exist on said placer mine and claim, or on any part thereof, so far as he knows, and he verily believes that none exist thereon.

Subscribed and sworn to before me, this-----day of-----, 19-----.

Notary Public.

In and for the County of -----, State of -----.

My commission expires-----.

FORM No. 59

FINAL AFFIDAVIT OF POSTING

(Caption as in Form No. 55.)

State of----- }
County of----- } ss.

-----, being first duly sworn according to law, deposes and says, that he is the duly authorized attorney in fact and superintendent of the ----- Mining Company, the claimant of the ----- mining claim in ----- Mining District, County of ----- and State of -----, the official plat of which premises designated by the Office Cadastral Engineer as Survey No. -----, together with the notice of its intention to apply for a patent therefor, was posted thereon on the ----- day of -----, 19--, as fully set forth and described in the affidavit of ----- and -----, dated the ----- day of -----, 19--, which affidavit was filed in the land office at ----- in the State of ----- in this case, and that the plat and notice so mentioned and described remained conspicuously and continuously upon said mining claim from and including the said ----- day of -----, 19--, until and including the ----- day of -----, 19--, including the sixty days' period during which notice of said application for patent was published in the newspaper.

Subscribed and sworn to before me, this-----day of-----, 19-----.

Notary Public.

In and for the County of -----, State of -----.

My commission expires-----.

FORM No. 60

AFFIDAVIT OF EXPENDITURE ON PLACER CLAIM

(Caption as in Form No. 55.)

State of----- }
County of----- } ss.

We, ----- and -----, being severally duly sworn, on oath depose and say, that we are citizens of the United States and of

the State of _____, that we are well acquainted with the situation and character of the _____ mining claim owned by _____ Mining Company, located in _____ Mining District, County of _____, State of _____, in Section _____, Township _____, Range _____, Meridian.

That the same is a placer mining claim containing _____ acres. That we have no financial interest in said mining claim. That we are conversant with the working of said mining claim, and that to the best of our knowledge and belief the amount expended on said mining claim in labor and improvements by the said claimant and its grantors is not less than \$500.

That the said labor and improvements consist of _____
(Here fully describe same.)

Subscribed and sworn to before me, this _____ day of _____, 19____.

Notary Public.

In and for the County of _____, State of _____.
My commission expires _____.

FORM No. 61

PRELIMINARY AFFIDAVIT OF POSTING

(Caption as in Form No. 55)

State of _____ }
County of _____ } ss.

_____ and _____, each for himself and not one for the other, being first duly sworn according to law, deposes and says, that he is a citizen of the United States over the age of twenty-one years and was present on the _____ day of _____, 19__, when a plat representing the _____ mining claim and premises and certified to as correct by the Office Cadastral Engineer of the District and State of _____ and designated by him as Survey No. _____, together with a notice of intention of _____ Mining Company to apply for a patent from the government of the United States for the mining claim and premises so platted, was posted in a conspicuous place upon said mining claim, to wit:

(Describe place of posting)

where the same could be easily seen and examined. The notice so conspicuously posted upon said mining claim being in words and figures as follows, to wit:

(Insert Notice of Posting, Form No. 77)

Subscribed and sworn to before me, this _____ day of _____, 19____, and I hereby certify that I consider the above deponents credible and reliable witnesses and that the foregoing affidavit and notice were read

by each of them before their signatures were affixed thereto and the oath made by them.

Notary Public.

In and for the County of _____, State of _____
My commission expires _____.

FORM No. 62

AFFIDAVIT OF PUBLICATION

(Caption as in Form No. 55.)

State of _____ }
County of _____ } ss.

----- being first duly sworn, according to law, deposes and says that he is the _____ of the _____, a _____ newspaper, published at _____, in the County of _____, State of _____. That the annexed notice of the intention of _____ Mining Company to apply for a patent from the government of the United States for the _____ mining claim designated as Serial No. _____, was published in said newspaper _____, commencing on the _____ day of _____, 19____, and ending on the _____ day of _____, 19____, as follows, to wit:-----

Subscribed and sworn to before me, this _____ day of _____, 19____.

Notary Public.

In and for the County of _____, State of _____
My commission expires _____.

FORM No. 63

AGREEMENT OF PUBLISHER

(Caption as in Form No. 55.)

I, _____, owner and publisher of the _____, a _____ newspaper of general circulation, published at _____, in the County of _____ and State of _____, hereby agree to publish in said newspaper the notice of the intention of _____ Mining Company to apply for a patent from the government of the United States for the _____ mining claim designated as Serial No. _____ and situated in the _____ Mining District, County of _____, State of _____, as required by the mining laws of the United States, and to hold said applicant alone responsible for my charges for making such publication; and no claim nor charge whatsoever shall be made by me against the government of the United States, or any of its officers or agents therefor.

In witness whereof, I have hereunto set my hand this _____ day of _____, 19____.

FORM No. 64

APPLICATION FOR PATENT

In the United States Land Office at _____, in the
State of _____.

Application of _____ Mining Company, a corporation, for a
patent for its claim of _____ linear feet of the _____ Lode, bearing
_____ and _____, together with surface ground adjacent and
appurtenant thereto, embracing an area of _____ acres, lying and being in
the _____ Mining District, County of _____, State of _____,
and officially designated by the Office Cadastral Engineer as Survey
No. _____, in Township No. _____, Range No. _____, _____ Meridian,
as shown by the official plat thereof filed herewith and the official field
notes of survey hereto attached.

State of _____ }
County of _____ } ss.

To the Register of the United States Land Office for the District
of Lands subject to sale at _____, in the State of _____
_____ being first duly sworn according to law, on his oath,
deposes and says that he is a citizen of the United States, over the age
of twenty-one years, residing at _____ in the County of _____,
State of _____, and that he is the agent and superintendent of
_____ Mining Company, and is duly authorized and empowered to
verify and file this application, as well as appear by a resolution of the
board of directors of said company, a copy whereof is hereto attached,
marked Exhibit "A," and made a part hereof.

That the said _____ Mining Company is a corporation duly
organized and existing under and by virtue of the laws of the State
of _____, having its principal place of business at _____ in the
State of _____, as will appear by a certified copy of its articles of
incorporation, hereto attached, marked Exhibit "B," and made a part
hereof.

Deponent further says that the said _____ Mining Company, in
virtue of a compliance on the part of itself and its grantors with the
laws of the United States relating to taking up, locating and holding
mining claims or mineral lands in the public domain and with the
mining laws of the State of _____, and with the local laws, customs
and usages of the _____ Mining District, has become and now is
the owner of and in actual possession of and entitled to so own and
possess _____ linear feet on the _____ lode, being a mineral vein
or lode or ledge of quartz and other rock in place, bearing _____
and _____, together with certain surface ground appurtenant
thereto, for the convenient use thereof in working said lode, vein or
ledge; said claim embracing in all _____ acres in superficial area; sit-
uate, lying and being in the _____ Mining District, County of _____,
State of _____, the boundaries and extent of which said vein, lode
or ledge and claim, at the surface, are more particularly set forth, men-
tioned and specifically described, by course and distance, in the official
field notes of survey thereof, hereto attached, marked Exhibit "C" and
made a part hereof; and also in the official plat of said mining claim

designated as Survey No. _____, Township No. _____, Range No. _____, _____ Meridian, and which said plat is now posted conspicuously upon said mining claim and premises; to which said plat and field notes of said Survey No. _____, reference is hereby particularly made as fully describing and setting forth by actual survey the boundary lines at the surface of the vein, lode, ledge, and mining ground so owned by, in the possession of, and for which the said _____ Mining Company hereby makes application for a patent; this deponent making the said plat and field notes of survey of said Survey No. _____, a part of this statement as describing the mining premises hereby sought to be patented and wherein the same are described as follows, to wit:

(Description)

(There is expressly excluded from this application for patent the following portion of said Survey No. _____, to wit: _____, as shown on said official plat.)

Deponent further says that the facts relative to the _____ Mining Company's claim, title and right of possession to said vein, lode, ledge and mining premises are substantially as follows:

That on and before the day of the location thereof, hereinafter mentioned, the premises hereinbefore described were mineral lands of the public domain and entirely vacant and unoccupied, and were not owned, held, or claimed, by any person, or party as mining ground, or otherwise; and that while the same were so vacant and unoccupied and unclaimed, to wit: on the _____ day of _____, 19____, _____, each and all of them being citizens of the United States, entered upon and explored the premises, discovered and located the said _____ vein, lode or ledge and occupied the same as a mining claim.

That the said premises so located and appropriated consist of _____ feet in a _____ direction on and along the said vein, lode or ledge from the location stake and _____ feet in width, together with all the dips, spurs, angles, depths, widths, offshoots, sinuosities and variations, as will more fully appear by reference to the notice of location, a duly certified copy whereof is hereunto attached, marked Exhibit "D" and made a part hereof.

That the said locators, said _____ and his said associates, upon the making of said location entered into and took possession of said _____ vein, lode or ledge and said mining ground, claim and premises, erected thereon such stakes and monuments as were necessary to point and designate the boundaries and extent thereof, did such work thereon and performed all such acts as were required by the mining laws of Congress, of the State of _____, and by the laws, customs, rules and regulations of the miners of the district in which said claim is situated, and filed their said notice of location in the office of the County Recorder of the said County of _____, by whom the same was recorded on the _____ day of _____, 19____, in Book _____ at page _____ of _____ of the Records of said county.

That said locators remained in the possession, occupation and enjoyment of the said _____ vein, lode or ledge and said mining claim, ground and premises and continued, from the date of said location, to work upon, prospect and develop the same until the _____ day of

-----, 19--, on which date the owners and possessors of said
 -----vein, lode or ledge, mining ground, claim and premises by
 their deed in writing, good and sufficient in the law, conveyed all of
 said vein, lode or ledge and mining ground. claim and premises so as
 aforesaid located by said-----, and his said associates, to
 -----, and thereupon said-----entered into, took possession
 and control, and commenced to work upon and develop the same, and
 so continued in such possession and work until the-----day of
 -----, 19--, on which date the said-----by his deed in
 writing, good and sufficient in the law, conveyed all of said-----
 vein, lode or ledge and said mining ground, claim and premises, to
 -----Mining Company, the applicant for patent herein, and
 thereupon the said corporation entered into, took possession and con-
 trol, and has since possessed, controlled, enjoyed, and occupied and
 is now in the actual and peaceable possession of all of said-----
 vein, lode or ledge and said mining claim, ground and premises.

That the said locators, said-----and his said associates and
 their said grantee and said corporation, did comply with every custom,
 rule, regulation and requirement in force in the-----Mining
 District, and with the provisions of the mining laws of the State of
 -----, and of the acts of Congress in that behalf enacted.

That there is a *true fissure vein*, lode or ledge with *well defined walls*
 carrying *gouge*, within said claim, having an average width of-----
 feet, running in a-----and-----direction and containing *quartzose*
 vein matter carrying *iron* and *copper pyrites*, and there is blocked out
 or in sight-----tons of ore therein of an average value of-----
 dollars per ton.

That the precise place where said vein, lode or ledge was discovered
 or disclosed within said location is at a point-----.

That there has been a large amount of money expended on said
 ----- vein, lode or ledge mining ground, claim and premises by
 said corporation, the applicant for patent herein and by its grantors,
 to wit: ----- dollars in (*running a tunnel* ----- feet) long,
 with drifts, *cross cuts* and stopes therefrom;) and there has been
 extracted from said vein, lode or ledge more than, to wit: -----
 tons of ore of the value of about ----- dollars per ton.

That by reason of the facts aforesaid the said-----Mining
 Company, the applicant for patent herein, has become and is the
 rightful owner (except as against the paramount title of the United
 States), and the lawful possessor of aforesaid-----vein, lode, or
 ledge and the said mining ground, claim and premises.

That the abstract of title herein, duly certified by-----, shows
 the various deeds, conveyances and transfers whereby the said
 -----Mining Company, the applicant for patent herein, became
 and is vested with all the rights, title and interest of the said locators,
 said-----and his said associates and their said grantee in and to
 said-----vein, lode or ledge and said mining ground, claim and
 premises, so located as aforesaid.

In consideration of which facts, and in conformity with the provi-
 sions of Chapter VI of Title XXXII, of the Revised Statutes of the
 United States, application is hereby made for and in behalf of said
 -----Mining Company, for a patent from the government of the

United States for the said-----vein, lode or ledge, deposit, mining ground, claim and premises so officially surveyed and platted.

Company by its Superintendent and Agent.

Subscribed and sworn to before me this-----day of-----, 19--, and I hereby certify that I consider the above deponent a credible and reliable person, and that the foregoing affidavit, to which was attached the field notes of survey of the-----mining claim, was read and examined by him before his signature was affixed thereto.

Notary Public.

In and for the County of -----, State of -----.

My commission expires-----.

NOTE.—SHOWINGS BY APPLICANTS FOR PLACER PATENTS. Paragraph 60 of the Mining Regulations, 49 L. D. 15, provides that in placer applications, in addition to the recitals necessary in and to both vein or lode or placer applications, the applicant must furnish certain data, and that since no report of a mineral surveyor is required where the claim is described by legal subdivisions, the claimant should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys. The precise point of discovery upon the placer claim should be given along with the points on the claim where cuts or other work has been done by the placer claimant as patent expenditure. 51 L. D. 265.

FORM No. 65

DEPARTMENT OF THE INTERIOR MINERAL ENTRY

U. S. Land Office, -----, No.-----

Application to Purchase

Receipt No.-----

The undersigned, claimant-- under the provisions of the Revised Statutes of the United States, Chapter Six, Title Thirty-two, and legislation supplemental thereto, hereby appl-----to purchase that Mining Claim known as the-----

----- Section-----
Township-----, Range-----, ----- Meridian,
designated as Survey---No.-----, said Survey---No.-----
extending ----- feet

in length along said-----vein
or lode, but expressly excepting and excluding from this application all
that portion of the ground embraced in mining claim---designated as
Survey--- No.-----

and also all that portion of any vein or lode the top or apex of which
lies inside of said excluded ground; said lode claim embracing-----
-----acres and said Mill-Site claim-----acres, in the
----- Mining District, in the
County of-----and-----of-----
as shown by the survey thereof, and hereby agree---to pay therefor
----- Dollars,
being the legal price thereof.

Dated-----, 19--.

UNITED STATES LAND OFFICE AT-----,
-----, 19--.

I HEREBY CERTIFY that the aforesaid Mining Claim or Survey-----
 No.-----as applied for above, is subject to entry by the above-
 named applicant---; the area of said Lode claim being-----
 acres and of said Mill-Site claim-----acres, and the legal price
 thereof-----dollars.

 Register.

FORM No. 66

APPLICATION FOR REPAYMENT

(Precedent in Repayment, 39 L. D. 146)

To the Commissioner of the General Land Office.

Sir: I hereby make application for the return of the purchase money
 and commissions paid with my-----under the-----law,
 for the-----of-----section-----, township-----,
 range-----, as per register's receipt No.-----, issued at
 -----, bearing date the-----day of-----, 19--, and
 which is surrendered herewith, and on oath declare that I am the
 identical (or legal representative of the) person who made such pay-
 ment, and that there was no fraud or attempted fraud in connection
 with the effort to obtain title to the above described tract of land.*

 (Applicant sign here)

 (Post-office address)

State of-----}
 County of-----} ss.

Subscribed and sworn to before me this-----day of-----,
 19--.

 Notary Public.

In and for the County of -----, State of -----
 My commission expires-----.

FORM No. 67

LETTER OF ATTORNEY

Know all men by these Presents:

That I, -----, of -----, have made, constituted and
 appointed, and by these presents do make, constitute and appoint
 -----, of Washington, D. C., my true and lawful attorney, for me,
 and in my name, place and stead, to do all things necessary in con-
 nection with my application for repayment of the purchase price and
 fees paid by me on Mineral entry No.-----, ----- for the
 -----and-----mining claims in Township-----Range
 -----M.,-----, which was filed-----, 19--, and to
 receive any warrant or draft issued in making the repayment aforesaid.

* If the receipt has been lost or destroyed, so state.

And for the purposes aforesaid, I do hereby grant unto my said attorney full power and authority to do and perform all and every act whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof, hereby annulling and revoking all former powers of attorney or authorizations whatever in the premises.

In witness whereof, I have hereunto set my hand the _____ day of _____, in the year One Thousand Nine Hundred and _____

(2 witnesses.)

FORM No. 67a

DEPARTMENT OF THE INTERIOR—GENERAL LAND OFFICE

APPLICATION FOR REPAYMENT OF EXCESS OR UNUSED MINING SURVEY DEPOSIT

(Under act of February 24, 1909, 35 Stat., 645)

The District Cadastral Engineer,

I hereby make application for the repayment of _____ dollars and _____ cents (\$ _____) being the excess or unused mining survey deposit made in connection with my application for official survey of the _____ mining claim, mineral survey No. _____, as per certificate No. _____ issued by the _____, _____, 19____; in the amount of \$ _____, and on oath declare that I am the identical person who made said payment (or _____ legal representative or duly authorized agent, as evidenced by authorization hereto attached).

(Signature)

(Post-office address)

State of _____ }
County of _____ } ss.

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public.

In and for the County of _____, State of _____.
My commission expires _____.

OFFICE OF DISTRICT CADASTRAL ENGINEER

I certify that the foregoing claim is correct as appears from the records of this office.

Office Cadastral Engineer.

FORM No. 68

APPLICATION TO DISTRICT CADASTRAL ENGINEER FOR SURVEY OF MINING
CLAIM—PUBLIC SURVEY OFFICE

-----, 19--
District Cadastral Engineer:

Sir:

-----, claimant, hereby make application for an official survey under the provisions of Chapter six, Title thirty-two, of the Revised Statutes of the United States, and regulations and instructions thereunder, of the mining claim known as the-----, situate in----- Mining District-----, County----- in Section-----, Township No.-----, Range No.----- Said claim is based upon a valid location made on-----, 19--, and duly recorded on-----, 19--, and is fully described in the duly certified copy of the record of the location certificate, filed herewith. Said certificate contains the name-- of the locator--, the date of location, and such a definite description of the claim by reference to natural objects or permanent monuments as will identify the claim, and said location has been distinctly marked by monuments on the ground, so that its boundaries can be readily traced.

-----request that you will send-----an estimate of the amount required to defray the expenses of platting and other work in your office, required under the regulations, that-----may make proper deposit therefor, and that thereupon you will cause the survey to be made by-----, U. S. mineral surveyor, and proper action to be taken thereon by your office, as required by the United States mining laws and regulations thereunder.

Claimant----

(By his agent or attorney.)
To be signed in writing only.

P. O. Address

FORM No. 69

APPOINTMENT OF ATTORNEY IN FACT

At a regularly called meeting of the directors of the-----Mining Company, held at its office in the city of-----in the State of-----this-----day of-----, 19--, there was a legal quorum of said directors present, to wit:

Messrs. -----and-----

Absent: Messrs.-----

After due and legal proceedings the following preamble and resolution were adopted by the unanimous vote of the directors present:

Whereas, it is the intention of this corporation to apply for a patent from the government of the United States for its certain mining claim, ledge, lode and premises situate, lying and being in the-----

Mining District, County of-----, State of----- and called the-----Mining Claim.

Now, therefore, be, and it is hereby

Resolved, That-----the superintendent and managing agent of this corporation be and he is hereby fully authorized and empowered for and on behalf of this corporation, and in its name to do all acts whatsoever necessary or proper for the purpose of making and completing said application for and procuring the patent for said mining claim and to make and file any and all affidavits or other papers of any kind necessary or required for the procuring of said patent for said mining claim and premises.

I hereby certify the foregoing to be a full, true and correct transcript from the minute book of the Board of Directors of-----Mining Company and a full, true and correct copy of the preamble and resolution adopted at a regularly called meeting of said Directors held at the office of said corporation in the city of-----, County of-----, State of-----.

Witness my hand and the corporate seal of-----Mining Company, by me hereto affixed this-----day of-----, 19--.

Secretary-----Mining Company.

FORM No. 70

REQUEST FOR TRANSMISSION OF NOTICES AND COMMUNICATIONS
TO ATTORNEY

In the United States Land Office at-----, in the State of ----- In the matter of the application of ----- for a United States patent for the ----- Mining Claim.

To the Register of the United States Land Office at----- in the State of ----- Sir: You are hereby authorized and directed to transmit all notices and other communications which may be necessary or required in the matter of the above entitled application for patent to -----, the attorney for said applicant for patent, whose post office address is -----, in my place and stead.

Dated -----, 19--.

Superintendent and Managing
Agent for-----

FORM No. 71

United States District Court

CERTIFICATE THAT NO SUIT IS PENDING
(Caption as in Form No. 55.)

United States of America }
-----District of----- } ss.
-----Division. }

Serial No.-----

I, -----, Clerk of the District Court of the United States for the-----District of -----, do hereby certify that I am the Clerk of the District Court of the United States for the-----

District of----- I do further certify that from an examination of the records of the United States District Court, in and for the -----District of-----Division, I find that no suit, action or proceeding of any character whatsoever was or has been commenced in said court on or subsequent to the-----day of-----, involving the right of possession or affecting the title to the-----Lode Mining Claim or the-----Lode Mining Claim, or either of them, or any part thereof, situate in the-----Mining District, County of-----, State of-----, and wherein-----is plaintiff and-----Mining Company is defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this-----day of-----, A. D.-----

Clerk of the District Court of the United States for the -----District of-----.

FORM No. 72

State Court

CERTIFICATE THAT NO SUIT IS PENDING

(Caption as in Form No. 55.)

State of----- }
County of----- } ss.

I, -----, do hereby certify that I am the duly elected, qualified and acting clerk of the County of-----State of-----, and ex officio clerk of the-----Court of the State of-----, in and for the County of-----.

And I do hereby further certify that there is now no suit or action of any character pending in said court involving the right of possession to the-----mining claim, or any part thereof, and there has been no litigation before said court affecting the title to said mining claim, or any part thereof, for-----years last past, or within the period prescribed by the statute of limitations affecting real property, to wit:-----years, other than what has been finally decided in favor of said-----Mining Company.

In witness whereof, I have hereunto set my hand and affixed the seal of said-----Court this-----day of-----, 19-----

County Clerk and ex officio Clerk of the -----Court of the State of-----in and for the County of-----.

FORM No. 73

CLERK'S CERTIFICATE OF FINAL JUDGMENT *

(Caption as in Form No. 55.)

State of----- }
County of----- } ss.

I, -----, do hereby certify that I am the duly elected, qualified and acting clerk of the-----Court of the State of-----in

* See Mining Regulations, paragraph 85.

and for the County of _____, and I do further hereby certify that in a certain action pending in said court and numbered _____ in the files and records thereof, wherein _____ was plaintiff and _____ was defendant, judgment was rendered in said court on the _____ day of _____, 19____, in favor of said _____ and against said _____. That said action was an adverse suit brought in support of an adverse claim filed in the United States Land Office at _____ in the State of _____, by said plaintiff to determine the right of possession of that certain mining claim situate in the _____ Mining District, County of _____ State of _____, known as the _____ mining claim.

That an appeal was taken from said judgment to the Supreme Court of the State of _____, by said _____. That thereafter, and on the _____ day of _____, 19____, said appeal was dismissed in and by said Supreme Court. That no further appeal is or has been filed in said matter. That the judgment above described and fully set forth in the certified copy of the judgment-roll in said action numbered _____ is a final judgment as the time for appeal from said judgment has, under the law, expired.

In witness whereof, I have hereunto set my hand and affixed the seal of said _____ Court this _____ day of _____, 19____.

County Clerk and ex officio Clerk of the _____ Court
of the State of _____ in and for the County of _____.

FORM No. 74

NOTICE OF POSTING OF APPLICATION FOR PATENT

Legal Notice of the Application of _____ Mining Company for a United States Patent.

State of _____ }
County of _____ } ss.

_____ Mining Company hereby gives notice that under and in pursuance of Chapter VI of Title XXXII of the Revised Statutes of the United States, _____ Mining Company, a corporation organized and existing under the laws of the State of _____ having its principal place of business and post-office address at _____ in the State of _____ and engaged in the business of mining at _____ Mining District, in the County of _____ State of _____ and which is authorized to locate a mining claim under the provisions of said Chapter VI, and which has complied with its terms, does claim _____ linear feet of the _____ vein, lode, ledge or mineral deposit bearing _____ and _____ with surface ground _____ feet in width, lying and being situate within the _____ Mining District, County of _____, State of _____, and has made application to the United States for a patent for said mining claim, vein, lode, ledge and mineral deposit and intends to and will file in the United States Land Office at _____, in the State of _____, that being the proper land office, its said application for patent, under

oath, showing such compliance, together with the plat and field notes of the survey of the claim, made by or under the direction of the District Cadastral Engineer for the State and District of _____, showing accurately the boundaries of the said claim, which are distinctly marked by monuments on the ground wherein and whereby the boundaries and extent of said claim, on the surface, are described as follows, to wit:

(Description)

The names of the adjoining and conflicting claims, as shown by said plat and survey, are the _____ officially designated as Survey No. _____ on the north, and by the _____ Mining claim (unsurveyed) on the east and said claim of said _____ Mining Company is designated as Survey No. _____ in the said official plat posted herewith.

Any and all persons claiming adversely the mining ground, vein, ledge, premises, or any part of the same so designated, surveyed, platted and applied for, are hereby notified that unless their adverse claims are duly filed according to law and the regulations thereunder, within the sixty days' period of the publication of the notice of said application with the register of the United States Land Office at _____, in the State of _____, they will be barred in virtue of the provisions of said statute.

Dated and posted on the ground this _____ day of _____, 19____.
_____ Company.

By _____
Its Superintendent and Attorney in Fact.

Witnesses:

NOTE.—Areas intended to be excluded from the application for patent must be expressly stated in both the posted and published notice as well as in the application for patent. Min. Regs., pars. 38-39.

FORM No. 75

PUBLISHED NOTICE OF APPLICATION FOR PATENT *

U. S. Land Office _____

M. E. No. _____

Notice is hereby given that _____ 19____
_____ Mining Company by
_____ attorney in fact, for _____, has
made application for patent for the _____ and _____, lode
mining claims, Survey No. _____ (in unsurveyed T. _____ R. _____,
_____ B. and M.) in _____ Mining District, _____
County, _____, described as follows:

(Description)

There are no adjoining nor conflicting claims.

The location notice _____ is recorded in Book _____, page _____
(mining locations) _____, _____.

Register

* The above notice is in accordance with government requirements and contains all the essential data necessary for publication. See 50 L. D. 556.

FORM No. 76

NOTICE OF FILING OF ADVERSE CLAIM

Department of the Interior
United States Land Office

Sir:

You are advised that on-----, there was filed in this office, during the statutory period provided therefor, the adverse claim of ----- for ----- claim, against the issuing of patent to ----- for ----- mining claim.

Now, therefore, under section 2326, Revised Statutes of the United States, and paragraph 83 of the regulations thereunder, approved March 29, 1909, "the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived, and the application for patent be allowed to proceed upon its merits."

Very respectfully,

Register.

FORM No. 77

PROTEST *

(Precedent in Grand Canyon Co. v. Cameron, 36 L. D. 66)

In the United States Land Office at-----in the State of-----.

In the matter of the application of-----for a United States patent for-----mining claim known as the-----and lodes and mill-sites in Section-----, Township-----, Range-----of-----.

Protest of-----Company.

To the Register of the United States Land Office for the district of land subject to sale at-----in the State of-----.

State of----- }
County of----- } ss.

-----, being duly sworn, according to law, on his oath deposes and says: That he is the-----of the-----Company, the protestant herein, and is duly authorized and empowered to verify and file this protest as will appear by a resolution of the board of directors of said company, a copy whereof is hereto attached, marked Exhibit "A" and made a part hereof.

That the said-----Company, the protestant herein, is, and since the-----day of-----, 19----, has been a corporation

* Under the Rules of Practice, 51 L. D. 547, a verified protest, in duplicate, must be filed with the local register and be corroborated by at least one witness having such personal knowledge of the facts in relation to the contested entry, as, if proven, would render it subject to cancellation, and these facts must be set forth in the affidavit. If the contest affidavit does not contain the date and number of the entry or a correct description of the land it may be held to be fatally defective. Fosdick v. Shackleford, 47 L. D. 558; Roark v. Tarkington, 51 L. D. 183.

maintaining and operating a railroad for the carriage of freight and passengers from the town of-----in the State of-----to a point on the rim of the-----in said state near what is known as the-----Trail, as will appear by a certified copy of its articles of incorporation hereto attached, marked Exhibit "B," and made a part hereof.

That on the-----day of-----, 19--, the said-----filed his application to the government of the United States for a patent for the mining claim known as the-----and lodes and mill-sites in Section-----, Township-----, Range-----of-----; and which said application has ever since been and still is pending and undetermined.

That at the time of the location of said alleged lodes the applicant for patent had made no discovery of any valuable deposit of mineral within the limits of either, or any of said locations and has not since made any such discovery; and that the lands so located by him do not contain valuable deposits of any kind, so far as known.

That the plat of survey and the notice of the application for patent aforesaid were not posted in a conspicuous place upon said mining claim. That if said plat and notice were posted at all they, and each of them, were posted where they could not be seen.

That the notice of application for patent for said mining claim was published in a weekly newspaper in-----called the-----, a newspaper of small circulation and read by few persons. That said notice, as published, was defective in this: That it failed to give the connecting line of said mining claim with a corner of the public surveys or a United States mineral monument. That it failed to give the names of the adjoining and conflicting claims, or the number of the survey thereof.

That the expenditures in labor or improvements upon the said lodes are insufficient in amount and kind for patent purposes.

That said-----, said applicant for patent, is seeking by means of fraud, deceit and misrepresentation to acquire a patent for the land embraced in said mining claim in that such lands are not valuable for minerals and the said alleged mining claims were not located for mining purposes but for the purpose of controlling, so far as possible, the use of a portion of the-----Trail leading from the terminus of the line of railroad of this protestant down to the walls of the-----Cañon of the-----River to said river, and thereby placing himself in a position either to prevent the public from using said portion or to pay to said-----such sums of money as he shall see fit to exact for the privilege of using said trail.

That the boundaries of the said locations were so fixed upon the face of the earth as to include that portion of said trail known as the-----which, because of the topography of the ground traversed by it, is located upon the only practicable and feasible route for a trail from the terminus of the protestant's line of railroad to the-----River, and that as far as can be determined from an inspection of the surface of the ground and the small amount of excavation thereon, the course of the said alleged mining claims was determined by the

course of the said portion of said trail rather than by the course of any lode or mineral bearing vein.

That the lands embraced in the so-called _____ and _____ mill-sites are not now and never have been used or occupied for either mining or milling purposes, and that said _____ is seeking to acquire patent to said mill-sites and each of them by means of fraud, misrepresentation and deceit and as part of a scheme devised by him for acquiring control of said _____ Trail and the waters flowing in what is known as _____ Creek.

That in carrying out said fraudulent scheme and purpose said _____ made pretended locations of lodes and mill-sites along and across said trail from its head on the rim near the terminus of the line of railroad of this protestant, to the foot of said trail at the _____ River, all in the _____ Cañon of the _____ River, so located as to include the greatest possible portion of said trail.

That the _____ Cañon of the _____ River is one of the great natural wonders of the world, is visited by large numbers of people from all parts of the world, practically all of whom travel over the line of railroad of this protestant, and the most of whom make the trip over said trail down to said river.

That said trail and said alleged mining claim and mill-sites are within the _____ Forest Reserve.

That this protest is made for the purpose of preventing the consummation of what protestant verily believes to be a fraudulent scheme to obtain patents for lands within a forest reserve regardless of their value for mining uses and to secure control of the waters flowing in what are known as _____ Creeks; and also for the purpose of securing to the public and particularly to all persons who travel upon the protestant's line of railroad with the intention of visiting the _____ Cañon of the _____ River the right freely and unrestrictedly to travel upon and over said trail down into said cañon.

Wherefore, protestant respectfully prays that a hearing be ordered to allow it to prove the foregoing allegations, protect its legal rights, and also to show cause why said application for patent should be canceled.

Post-office address

Subscribed and sworn to before me, this _____ day of _____, 19____.

Notary Public.

In and for the County of _____, State of _____.

My commission expires _____.

FORM No. 78

AFFIDAVIT OF LOSS OF REGISTER'S FINAL CERTIFICATE *

State of _____ }
County of _____ } ss.

_____, being first duly sworn according to law, deposes and says: that he is the identical person who, on the _____ day

* If affiant claims as a transferee of the entryman, the fact should briefly be stated, showing the loss of said certificate, either by his transferee or by the affiant, and alleging affiant to be the present owner of the claim.

of-----, 19---, made Mineral Entry No.---in the-----
land office, for the-----mining claim. That affiant has lost
the Register's final certificate of entry issued to him at the date of said
mineral entry, and wholly is unable to find the same, though he has
made diligent search therefor. That affiant is the present owner of
said-----mining claim, not having sold the same since the
date of said mineral entry.

Wherefore, affiant asks that the United States' patent issued upon
said mineral entry be delivered to him.

Subscribed and sworn to before me, this-----day of-----, 19---

Notary Public.

In and for the County of-----, State of -----
My commission expires-----.

FORM No. 79

PUBLICATION NOTICE OF ORE BUYER'S APPLICATION^{a b}

In compliance with Section 2253, Public Resources Code (Chap.
93, Stats. 1939), the undersigned, whose principal place of business is
at -----, California, hereby gives notice that
application has been made to the State Mineralogist for a license to
carry on within the State of California for the year ending December
31, 19---, the business of milling, sampling, concentrating, reducing,
refining, purchasing, and receiving for sale ores, concentrates, and amal-
gams bearing gold or silver, gold dust, gold and silver bullion, nuggets
and specimens.

Protest may be made by any person to the issuing of such license at
the office of the State Mineralogist, Ferry Building, San Francisco.

Dated -----

(Applicant)

^a This notice shall be published at the cost of the applicant once a week for three successive weeks in a newspaper published in the county or counties where such business is to be carried on. (Section 2, Chapter 70, Stats. 1925; amended 1927; amended 1929.)

^b In *Ott v. Deer Creek Placer Co.*, 36 Fed. (2d) 553, it is said that under the Ore Buyer's License Acts (Stats. 1925, pp. 162, 164; Stats. 1927, p. 314), it would seem that the book or record to be kept by a licensee should contain the weight, or amount, and a short description of the ore, concentrates or whatever was delivered to him in its original form, and not the value of the gold extracted therefrom; and it would likewise seem that the report to the state mineralogist should contain the same information. (Public Res. Code, § 2267.)

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